THEOLOGY MORAL OF THE MOST ILLUSTRIOUS AND MOST VENERABLE D. ALPHONSE DE LIGORIO; ONCE BISHOP OF S. AGATHA GOTHORUM, AND RECTOR OF THE MAJOR CONGREGATION SS. REDEEMPTORIS, BY PIUS VII, ON THE 15TH OF SEPTEMBER IN THE YEAR 1816 BEATED WITH HOLY FEASTS, ADDED AT THE FOOT AS A USEFUL INSTRUCTION FOR CONFESSORS, TOGETHER WITH AN EPITOME OF THE DOCTRINE MORAL AND CANONICAL FROM THE WORKS OF BENEDICT XIV BY THE ILLUSTrious AND REVERENDissimE JOHN DOMINIC MANSI, ARCHBISHOP OF LUCENSE. CORRECTION IN OTHER EDITIONS. THE THIRD VOLUME. Containing a treatise on contracts and particular precepts suited to the proper station of certain men.

ANTEVERPLE, IN THE PRESS OF JANSSENS AND VAN MERLEN, AT THE CORNER-STONE PLATEAU. 1822. C 1276.3.3:: /ARD COLLEGE LIBRARY FROM THE LIBRARY OF JOHN CHIPMAN GRAY GIFT OF ROLAND GRAY SEP 4 1984 Digitized by Google # THEOLOGIA MORALIS. HEAD III. To be contracted. DOUBTFULI.

What is generally a contract? 707 What is a contract, and how manifold? 708 How manifold is a contract perfected? 709 If someone contracts without intending to contract, what then? 710 And if without intending to obligate oneself, what then? 711 Does a contract oblige in conscience without solemnities? 712 Does an obligation arise from a contract concerning an infamous thing? And to whom then is restitution to be made? 713 Is it when the action is due but not from justice that the price received is to be restored for that which was accepted? 714 When does fraud or error render a contract void? 715 What if the fraud concerned the quality of the thing, but provided a cause for the contract? 716 Does grave fear unjustly make void a contract ipso facto? 717 Can one who has suffered from fear dissolve the contract at his own discretion? What if a contract be rendered void through reverent fear or through importunate prayers? What if through light fear? Can one who has suffered fear reclaim from a third party possessor? Response. It is a contract, whether by the agreement of two parties, whereby 707.

» knowingly, freely, and legitimately each reciprocally uses; » or at least one party binds itself to the other upon acceptance: whatever external sign this may be: for example, etc. » In a loan agreement, from one side he is obligated ex una parte to not repeat the loan before a certain time; from the other side, he is obligated mutuaturius se tunc ad illud red, 4 Lib. « III. Treatise. V.

Of the Seventh Commandment of the Decalogue. "Due to be given; and thus concerning the others." In the promise itself, or in the absolute donation, one party alone is bound after the acceptance by the other. It must be noted, other contracts are named ones, such as purchase, loan, etc. Other unnamed ones, of which from l. Naturalis leges de praescripta verbis quatuor dantur species, scilicet: Do ut des; Facio ut facias; Do ut facias; Facto ut des.

Moreover, it is to be noted that some contracts are naked, others clothed, namely by stipulation and oath. However, with regard to those contracts that are naked, no regular action is permitted in external forum. But it is asked: in what manner are such contracts perfected? Resp. quatuor modis, primus. By consent, as in purchase, leasing, etc.; and if in these matters the script is agreed upon, this will be more conducive to proof than to constitution, according to § Un Ins. de Obl. ex cons. et l. Supreme Congregation of the Sacred Tribunal.

Receive it, unless the parts intend to suspend the consent until the scripture is made; and this is indicated when from the beginning they agree on the scripture, l. Contract, C. de Fide instrum. II. Contracts are perfected by words, as in a stipulation. III.

Scripturd, ut in contrahente census. IV. Traditione, ut sunt mutuum, donatio, depositum, commodatum, pignus: qui omnes contrahuntur, nisi tradita re, non perficiuntur. Ita communiter Lugo, Hinc in contractibus qui solo consensu perficiuntur, nequit una pars alteri invito resilire; Secus si contractus scripturae aut traditione indigent. However, in the forum of conscience, contrahentium stand with intention; Thus commonly DD. apud Salmanticens. ibid., n. 6 cum 2 cap. 17 n. 19 Covarr.

Gom. etc. 709 It is asked: 2. whether, if one contracts externally by signs but without an inward intention to contract, he should be held bound in conscience to the contract? Resp. negativè ex communi cum l. 1 disp. 9 n. 5 et Lug. Sylv. Prado with n. 7. Receive, unless in some onerous contract the other party has already fulfilled his part; then indeed you are bound to fulfill your own, even if falsely promised, according to what is said about the fictitiously promisor Matrimonium, see § 642.

It is asked whether one who, knowing the obligation of the contract, wishes indeed to contract it but does not wish to oblige himself, remains obligated in conscience? There is a double probable opinion. The first opinion affirms what the second opinion probabilistically denies, namely, in lib. iDgn. 5 Bonac. eod. tit dict. n. 28 cum, according to which it is said in cap. fin. de Condit. appos., that a condition contrary to the substance of

matrimony annuls it, even though there be an intention of contracting. See what is said on page 121, verso, of the treatise on Law. But as to the Vow, on page 126, it is sought [or inquired] II.

Question 4. whether a contract celebrated without the proper solemnities obliges in conscience? A triple probable opinion is given. The first opinion denies this; because such contracts, founded on laws that are violated, are based not only in presumption of deceit, but also in danger; and therefore human law can entirely remove the natural obligation of the contract: Thus the Church has nullified Marriage without a Priest and a contract entered into without witnesses: So it is said in Canon 19, number 35 of Lugo, section 9, number 252, and elsewhere. The second opinion, completely opposed to this, which he holds, can be found in Fortuna de Justit. lib. 4 quæst. 5 Mol. Decretum 81, caput 1, Sabbati et primi diei.

Contractus n. i item Abbas, Innocent. Saint Augustine and others according to Cabass. Theor. They call it justly and probably meritorious Lugdunensis, lib. 4, cap. i, d. 14, with the law cited, cum l. cit., cum 3) docet, lib. 6. III.

Treatise. V. According to the Seventh Commandment of the Decalogue, in these contracts the possessor should be preferred until condemned to restitution by the judgment of the court; and this is proven from c. Cum sunt, de Reg. In law: When the rights of the parties are obscure, it is more advantageous for the accused rather than the plaintiff. I hold this sentence not only to be more probable, but absolutely binding in practice, inasmuch as (in accordance with the principle stated throughout this book), since possession grants a certain right, it is unjust for the possessor to have his property stripped away unless it be established according to the law of another.

This third opinion presupposes that the second is sufficiently probable. But the Authors of the first sentiment might object the example of the Marriage clandestine, without a Priest and witnesses initiated, from which no natural obligation remains, since the Church in the Tridentine Session 24, cap. 2, declared it altogether invalid. But it is replied that such a contract differs greatly from others with regard to the contract of Matrimony, since the singular power to elevate itself to the dignity of the Sacrament has been imparted by God to the Church alone, namely, to release the Spouses from all obligation; who enter into Nuptials without the proper conditions prescribed by the Church. For although the Church cannot change anything regarding the matter of the Sacraments, and therefore cannot declare a Matrimony contracted with legitimate consent invalid, she can nevertheless well prescribe and declare that the consent of the Spouses is illegitimate which they give against the law established by

the Church for the common good of the Christian Commonwealth. Dubitando tamen procul tenetur possessor stare sententiae judicis, si damnetur ad restituendum; ut bene addit: An vero possit judex eo casu judicare contra possessorem, si probabilior sit judici opinio possessori opposita? I deny more probably, according to what is said in book 4, note 210.

It is queried II. Here however note down what is found in l. Although uselessly, C. de Fideicommissis argues namely that if the heretic has already transmitted the thing entrusted to him from faith in a will non-solemly, he cannot thereafter reclaim it precisely in this manner, since it seems that satisfaction of the voluntary intention of the one who bequeathed the trust is not merely to be made out of Scripture (the words of the text), but also out of the conscience of the person to whom the trust was left. Herein is set forth in the Argument: Knowing one to have a less solemn will, and having discharged it, he does not reproach him, "1." Si alibi promisisti aut donasti interioriter tantum, aut si externo signo quidem alteri non acceptavit, non fuit contractus nec obligaris.

» 2. Non est contractus, nec obligatur si alterum non acceptavit neque interius tan- tum, neque externo signo quidem alterautem. The contract is invalid if the parties are incapable of contracting, or if positive law prohibits it. See 2 c. 37 d. 8. It is invalid if the contrayers are incapacitated from contracting, or if positive law prohibits it. Moreover, if the matter of the contract is illicit, as in the case of stolen goods; or illegitimate, as when a thief sells another's property.

It is asked I. Whether a contract induces an obligation regarding turpitude, such as concerning the hiring of murder, adultery, theft, sacrifice, fornication, and similar matters? It is certain that before the commission of sin there is no contract, and consequently no obligation can arise, since justice in no way can obligate to what is illicit; hence it is certain that in such a case neither he who promises is bound to give the agreed price, nor the other to retain the accepted price. It is doubtful whether after the performance of an illicit work there arises an obligation to pay the promised price, and whether the other party can retain that price? As regards common brothels, it is certain between the Doctors that they may retain the price of a prostituted service rendered.

Thus S. Thom. 2-2, q. 62, a. 5 ad 2, where he teaches: When one gives to a prostitute for fornication..... the woman can retain what was given to her; But if she had extorted something superfluously through fraud or deceit, she is bound to restore it to him. And thus Continuator Tournely tom. 1 pag. 330 sect. 4 and all others commonly: And it is proven from l.

44 ff. where it is said: But also what is given to a harlot cannot be repaid... whatever she may licitly do because she is a harlot, yet not licitly receive it, since she is a harlot. For other maleficium, namely for inflicting an unjust sentence, or for committing murder, adultery, fornication, etc., there are two probable sentences: The first denies that there is an obligation to pay the price, or that it can be retained; thus Adrianus in 4 de Llb. III. Treatise.

V. On the Seventh Commandment of the Decalogue, book 3, D. 5, Jo. Medici et Lugo assert Navarrus aliunde mutasse sententiam; Continuator Tournely l.c., p. 33o, et alii ap. They call it well-turned in volume 7, page 147, note 5, and probable in the second book, chapter 14, note 6o. Roncagl. de 7.

Precept. i.e., 6. Question 4; and at 2. tract. 2. to this adheres this opinion, namely, that an illicit action is unworthy of any price, since sin is not salable. It is proven from principle 2. Reward. C. de Condict. where it is said: Actions are to be avoided on account of an infamous cause introduced against good morals by stipulation. Item ex lege.

Pacta. C. For according to the common rule it is such that what at first does not exist cannot be made to recover from a time when it did not exist. However, these laws are consented to not only to prohibit the illicit actions themselves but also the valuation of a price for them, inasmuch as the valuation serves as an incentive for similar evils. It is added that laws which are not relaxed through false presumption rightly bind in conscience. Whereupon S. Th. 2 aquæs. 32 art. 7 ad 2 ait: Among the Alos, who are bound by such laws, they are held to give up everything for restitution.

And question 62 article 5 answer 2. He who has received contrary to the law... should not retain it for himself. According to this judgment, there is doubt as to whether restitution should be made by him who has received contrary to the law? Sotus, et Covarrvias hold that restitution should be made to him who gave; but Anton more probingly and commonly holds otherwise. Navarrus et alii censent, erogandum esse pauperibus vel locis piis; absurdum enim est, et contrà mentem legum, ut illi fiat restitutio; quem potius leges punire quam juvare intendunt.

The second opinion, however, more probable and more common, which they hold [i.e., Anton], is found in 3 c. 9 n. 27 et 28; 2 c. 14 n. 52 et t. 18 n. 18 Croiz l. 3 part. 2 n. 602; Question 1 art. 1 n. 3 Lugo de Just. D. 18 n. 56 cum Vasq. Sun. Mol. Tower.

Covarr. Cajet Arag. and others commonly teach, that a promisor ought to discharge the price, and on the contrary, that a receiver is not bound to restore it. Reason, as some say, is that although an evil work, even though it is not worthy of a price inasmuch as it is evil, is nevertheless worthy of a price inasmuch as it is useful to another or delightful. But this reason seems slender to me, for, as commonly taught by DD. with St. Thomas, no price is deserved by a thing which yields solely to the utility of begging, and its deprivation brings no inconvenience to the seller worthy of price. Nor can it be said that a noble illicit work receives just payment for the rectitude it lacks; for the privation of this rectitude, since it is a matter purely spiritual, does not seem in any way to be estimable as worthy of price.

The reason seems more compelling to me, because according to common opinion (n. 644), in any onerous contract, "do ut des, facio ut facias," the natural law dictates that when one has fulfilled his part, he is bound to have the other fulfill his part, rather than being able to do so licitly. Wherefore, if another has already fulfilled his own work (even though it be illicit), you are bound to satisfy him with the promised reward. But thou wilt say: this happens when both parties are estimable in regard to price; whereas here the action offered illicitly is not worthy of any price. I respond: that sinful action is not worthy of any price, because it is illicit; but a good price is deserved by him who performs it laboriously, or ignominiously, or perilously; for then price and action agree at least in the genus of temporal things. And although that ignominy or peril cannot be compensated for any price, and before a contract you are not bound to compensate what is lacking, since they are things of different orders between which no proportion is given; and therefore he who has stolen another’s reputation is not bound to make good the infamy with money if he cannot restore the reputation, as we said more probingly in n. 627.

However, given the contract and the promise of a reward for an action performed by another through sin, you are bound to fulfill the promised price: to pay it, not now in order to compensate the other's damage, but to fulfill a natural obligation, from which (as we said) everyone is bound to fulfill his promised part after the other has fulfilled his. Otherwise (as correctly stated by Lugo loc. cit.), it does not seem how a rapist, who has violated a virgin under the made promise of marriage with intent to lead her there, can be obligated in accordance with common opinion, as we said in n. 643. As for the civil laws according to the first mentioned opinion, they respond thus: And this sufficiently signifies what the law declares at the beginning of this question, namely, that a prostitute can retain the price of her prostitution, even though she turpulently performs

what constitutes her profession as a prostitute; yet she does not receive turpulently what is the price of her prostitution, since she is already a prostitute. It is asked II. Whether, if a man give something to a woman in order to extort coition, she can retain that, coition not having been conceded?

If there exists a pact either explicitly or implicitly concerning the consummation of the copula, then certainly it is bound to be restored; But if the gift was given with intent to allure, because he who gave it was altogether liberal; just as if someone were to give money to the Bishop solely for that purpose, so that he might confer a Benefice, the Bishop can justly retain it if he does not confer. Thus commonly Lugdunensis D. 18 n. 49 737. Roncaglia de Præceptis I c. 6 quæst. 2 et Dic. ibidem difficius excusat mulier accipiens tale munus à peccato scandali, quia vir reddit ardentior et audacius ad eam concupiscendam per acceptum munere. Wherefore D. Thomas in book 4 of Hieronymus said: A woman is not chaste who, when asked, accepts gifts. It is asked.

If the action is due on account of another virtue than justice, for instance fasting during Lent, should the price be restored for that action, which was accepted? They affirm page three, paragraph two, number two ninety-five. But more commonly and probably they deny it ibid. Reason, because the present price then acquires a right which it previously lacked. ## Cap. III. Dub. I.

Of Contracts. "4. Item, si contractus sit factus vi, dolo vel errore versante circa rei substantiam, v.g., si acetum pro vino, vitrum pro gemma vendidisti. 5. The contract is not invalid (even though it might sometimes be rescinded on account of injury), if error or fraud intervenes concerning quality or circumstantial accident; for instance, if you bought Moselle wine, thinking it to be Rhine wine: unless perhaps the intention of the contracting party was conditioned so as not to bind itself, except in the presence of such a quality and circumstance; which can virtually be considered, if error concerns an extremely altered circumstance of the object and an excessively excessive estimation thereof, as noted in . 3 t. 4 c. 6. A contract is null if either fraud or error concerns the substance of the contract.

It is common; . 2 c. 17 n. 27 Bon. And this, even if deceit or error did not provide a cause for the contract, that is to say, even if, with the error revealed, one party had still contracted: because there is always a lack of actual consent, ibid., n. 28, with St. Anthony. Soto, Caj. Hence he says: But a greater doubt arises if deceit or error was such only with regard to the quality of the thing, but had given cause for the contract that, when

manifestly known, the party would not have consented, whether the valid contract would remain? They deny it, P. Concina tom. 7 p. 246 Basil. and others according to de Matr.

L. 7 D. 18 n. 17 et tinctionem substantiae Oppositum tamen est communiter traditum à DD. et probabilius cum Lug. D. 22 n. 92 . l. 1 D. 64 n. 3 l. 3 tract. 4 c. 5 n. 3 2 p. 5 n. 19 loc. c. cum Mald Prado, Non de jure positivo, cum ex Inst. l. 4 tit. 13 de Except. sic habeatur: Si metu coactus, aut dolo inductus; aut errore (intellige circa qualitatem) lapsus stipulabii Tito promisisti quod debucras promittere, palam est te jure civili obligatum esse et actio qua intenditur, dare te oportere efficax est: Sed iniquum est te condemnari, ideoque datur tibi exceptio, quod metus causa, aut doli mali, etc. Non de jure naturali, nam ad contractum validandum sufficit animus voluntarius quoad substantiam, licet sit involutarius quoad accidentia: Nisi (ut bene advertunt cum ac Laymann) contrahens expressè consentiat sub conditione, si talis adsit eircumstantia, quia tunc qualitas transit in substantiam. Commonly however, the Doctors say as Concina says with Busembach: Les. emptoris. And when the thing is still intact, they add in n. 6 98 that if there has been an invincible error, he who was deceived shall not be bound in conscience to fulfill the contract, even though it may be burdensome, after he knows the truth, which if known to him from the beginning would have caused him to consent minimally: The reason is because this is the tacit intention of those contracting, not to obligate themselves to a contract when they discover that they were deceived; and this is said to be confirmed by received custom. When indeed the thing is not whole, namely if one part has already fulfilled it, then if that other party was not aware of the error, although you do not have an action for rescission, nevertheless the contract can still be rescinded in conscience, if the matter is of great moment and the deception was the cause of the contract. As Sylvius and Navarrus say. And if the other party was aware of the error, then you can annul the contract as above, even in judgment.

However, it should be noted that in conscience the other party would not be bound to manifest the error to you. Thus understand: Provided that he does not deceive you, or himself not be the cause of the error, as is said in n. 737 at the end. Neither is the contract invalid, whether onerous or gratuitous, nor from grave fear unjustly incurred, although it still remains simply free and voluntary: this can be rescinded by the judge at his discretion out of regard for the fear endured. Thus commonly quoted according to . 8 n. 4 Card. Lugo d. 22 Excipiuntur tamen aliqui contractus, qui ipso facto sunt irriti (saltem ex jure positi vo), si ex metu gravi fiant; talis est i.

Contractus matrimonii, etiamsi juramentum accerserit, ex c. Cum loco, et c. Veniens. * (Utrùm currat idem in sponsalibus? They affirm, they say that sponsalia are rescindible only. V. de Matr. lib. 6 n. 844) * 2. Religious profession, according to c. i De his. 3. In other vows and contracts, wherever there is a question of vows. * (For he who has vowed but does not wish to bind himself. A contract of promised or dissolved dowry, which in this follows the nature of marriage, to which it is accessory.)

Law. If woman. § If dowry, ff. That which is caused by fear. 5. Promise, or tradition, in matters of the Church, c. 15, q. 6, art. 6. The authority of the tutor is obtained through fear. From Auth. tut.

Others add more, namely: promissio, and gratuitam donationem, renuntiationem beneficii; jurisdictionem per metum extortam. But they have disputed over this, see C. Lugo de Jure d. 22 n. 115 and seq. Question 1. A contract initiated through great fear, 716, 14 Lib. III.

Treatise. VI. Is the Seventh Commandment of the Decalogue ipso facto invalid? There is a triple probable opinion. The first opinion affirms; reason 1: because if such a contract were naturally valid, justice would be taken from justice, since an obligation arising from a contract extorted by injury would be an act of justice, which is not possible.

Reason 2: quia si contractus valeret, utique dominium rei traditae transferretur, et metum incidens eam retinere posset saltem usque ad Judicis sententiam; sed hoc omnes negant; ergo contractus per se est nullus, saltem de jure positivo, ex l. Whoever is in prison, 22 ff., on what is said about that which is caused by fear, where it is stated that a contract initiated out of fear is null and void. Ita 326 n. 2359 cum item Sylo. Rebell. et alii apud Ita Sot. in IV D. XXIX q. I art. 3 Pont. de Mair. l. IV c. VI n. 4 cum Medin. Arag.

Th. 2 2. q. 89 art. 7 ad 3 ubi ait: Talis obligatio tollitur per coactionem, quia ille qui vim intulit hoc meretur ut ei promissum non servetur. Reason, because for a liberal donation and to differentiate from other contracts, the will requires absolutely free liberty according to natural law. The third opinion is more probable and more common, which Lugo holds concerning contracts. D. 22 n. 115 . 2 c. 17 dub. 6 qui vocat fere communem, tract. 33 c. 2 n. 32 1 c. 11 Renzi de Non naturali, quia metus non tollit simpliciter voluntarium, ut D. Non jure positivo, dum in l. If a woman from what is commanded to judges on account of fear etc., it is prescribed that such contracts be rescinded; therefore per se the law has them as valid.

Receive nevertheless marriages begun through great fear, which certainly are null by canon law. See concerning Marriage, 1st part, article 6, note 1054, to which is added: I. Religious Profession c. 1 de his quae v. II. The Election of the Preface, cap. III.

The authority of tutors extorted through fear, according to book 1, last sections, ff. of the law concerning the tutor's authority. IV. The tradition of ecclesiastical matters has come to us by way of the chapter. V. Traditione rerum Ecclesiasticarum ex c. pervenit de jurejur. The ecclesiastical jurisdiction acquired through fear, and also civil [jurisdiction], is found in book 2, chapters following, concerning the Jews.

VI. Absolution from censures (not however from those inflicted). VII. Renunciation of Benefits, see 6. a n. 37. Question 2: Whether one who has suffered fear can dissolve a contract at his own discretion without the authority of the Judge? Croix denies it in l. 3, p. 2, n. 638, and follows him Mazz. The common opinion affirms what is held according to 6 c. 2, n. 123 de tr., 2 D. 1, p. 12, n. 6 ad 2; it is cited.

Renzi in the aforementioned location and Reb. Whereby they infer that he who has suffered fear may privately compensate himself well; understand, if he ask, and another does not wish to dissolve the contract. And on the contrary, he who instilled fear is bound to restore the thing extorted immediately when the other petitions. Thus n. 38. The same thing that has been said about contracts initiated out of great fear must also be said according to Pontius in Matr. l. 4 c. 11 n. 3 and 4 regarding initiations through reverential fear. (Even though Pontius in his treatise maintains, as stated above in question 1, that contracts merely gratuitous are not only irritant at the will of the party, but ipso jure irritant), others nevertheless admit this condition only when they add to the reverential fear also blows, or threats, or prolonged indignation, or a sinister look, harsh words, and similar things which truly instill great fear of harm.

Thus Sanchez de Matr. l. 4 D. 6 n. 14. cod. tit. c. 9 n. 33 et 34 cum Idem in substantia sentit Pontius 16 Lib. III. Tract. V. Of the Seventh Commandment of the Decalogue. But it is said in book 4, chapter 5, note 3 with others, that the fear of reverence per se is grave, because it is one thing to act out of reverence for a superior as due, and another to act out of reverential fear, which necessarily induced the fear of some great imminent damage from disobedience, such as prolonged indignation, etc., as mentioned above.

Autem autem precibus importunitatis constituere metum gravem? Pontius

affirms id ibidem. Note 17 with Nald. Lugo, etc. But it is more correctly to be denied unless prayers are added out of fear and reverence for the Superior: Thus. 4 D: 7 n. 7 with many and Bonac. And he rightly observed: n. 8 that not all frequent prayers are importunate, but only those which are most insistent and frequently urged.

As to whose regard there is a fear of reverence? Beyond one's own Father, Bishop, and Magistrate, as stated in 4 D. 5 ex n. 26 along with others, there is also due respect to the father-in-law, grandfather, curate (if he be austere and prone to enforce threats); and also to the elder brother or uncle if one lives with them and they provide sustenance. But it is queried whether a contract entered out of slight fear is revocable at the discretion of him who has suffered the threat? The first judgment affirms this in the internal forum; for in the external forum there is no action according to lib. 6 ff. on what concerns fear etc. The reason is that whatever fear inflicts an injury from which one should not expect any benefit; hence just as he himself is bound in conscience to relax a promise extorted by such fear, so too the promisor is not bound in conscience to fulfill it. Ita probabiliter 2 c. 17 n. 46 cum aliis item l. 4 D. 19 n. 6 de bene tamen excipiunt Matrimonium (juxta nostram sententiam vide de Matr. l. 6 n. 1056) et Professionem religiosam. An etiam votum?

See what is said about the Vow, no. 167. The second opinion, however, seems more probable to me than that which Pontius holds in his fourth book on the Matr. chapter 10 note 5 and chapter 2 section 6 note 4, and also with Per. Reason, because consent is not presumed from fear but truly and spontaneously; who would know it to be light, and when he could easily do so, did not reject it. They, however, consider it permissible to inquire whether if there has been a grave and unjust fear, 19 serving as a cause for the contract, and the matter has come to a third possessor in good faith, can he who suffered the fear from that source revoke the thing, and be bound to restore it? He denies it; and this is evident from L. 14, §. 3, de Eo, where it states: In this action, it is not sought whether he who was agreed or another instilled fear! For it suffices to say that fear was endured. «7.

They cannot contract who do not have the administration of their goods: such are nearly prodigals, madmen, filifamilias, wives, religious persons, pupilli, and minors; except in cases which V. 2 c. 17 d. 4 and infra here c. 4 d. 1 ex n. 918 exclude. ## DUBIUM II. ## What specifically regarding a Promise and a Donation? Whether a simple promise binds under grave obligation? What if a promise becomes harmful, or if there is a change? Who are those incapable of giving a gift? Are they burdened with debts due? What about a donation between husband and wife? And between

father and son? Does a donation obligate before acceptance? What if the donation is made for pious causes? Can a donation confirmed by a vow be revoked before acceptance? 18 Lib. III. Treatise.

V. Of the Seventh Commandment of the Decalogue. When is a donation made to an absent person considered obligatory? » 729 Can a donation be accepted after the donor's death? » 730 What if a mandate had been given that the donation be made by the envoy, and he himself had omitted to do it?

Can an heir accept a donation to the deceased donor before acceptance? » 732 Is it required that there be a delivery in order to acquire ownership of the donated thing? » 733 Whether a donation exceeding the sum of 500 solidi be valid? » 734 An sit obligatio implendi modum sive finem donantis? » 735 An promissio prodiga sit valida?

What if a donation is made for the purpose of enticing? » 737 What if a cause false is given? And what if the cause be secondary? » 730 "Resp." Which pertains to this matter, is easily gathered from the aforementioned statements on Vow 1. 3 trans. 2 cap. 3.

From which [reasons], and the doctrine of the preceding doubt is resolved. » 1. The accepted promise from the promisor, if the matter be notable, whether it obligates according to itself secondarily viewed under a mortal sin? It does not agree between Doctors, Cajetan denies whom follows 19 sectio 10. Others (perhaps more probably) affirm with chapter 65, canon 7, note 4, Fill.

Mald. etc. I said according to itself, because it is certain that something which obligates accidentally may do so under a mortal sin, for instance on account of grievous damage, which otherwise the promisor would have suffered: thus if you had promised him a loan of money, and he, being in debt elsewhere, did not foresee any prospect of profit to himself. See. 2 c. 18 d. 5. » 2. The whole of this obligation commonly depends upon the "intention of the promisor." Regarding which Sa notes, it is hardly anyone intending to promise to obligate himself, or to give another a right to demand, unless he adds a vow or makes an instrument; but usually only intend to declare his purpose.

V. Tota haec obligatio communiter dependet ab intentione promittentis. Scourge. t. 3. c. 6 and Mol. Hence, in order for a promise to be deemed valid in external forum, besides acceptance, it is required that the cause be expressed, on account of which the promise is made; otherwise it is

presumed to have been made through error or jest; t. 7 c. 16 art. 7. ex covarr. et In hac quaestione tres sententiae adsunt omnes satis probabiles. The first [authority] says that any accepted promise obligates under a grave obligation and according to justice, because the promised fidelity provides a right to the promisor regarding the thing promised.

Thus. L. I. D. 5 n. 20. 4 c. 12. n. i cum S. Anton. Covarr. . c. 4 p. 79. The second opinion states that the nature of the obligation depends on the will which the promisor had at the time he made the promise. In dubio tamen, ait Lugo, non censeri factam obligationem, nisi per verba obligatoria sit expressa; vide Lugo D. 23 S. 6 n. 39 imo Sa, ap. But unless an oath or an instrument is added.

Cæteris in dubio, an quis voluerit se obligare ex justitia, vel ex fidelitate, an graviter vel leviter, probabilissimum mihi dicendum videtur cum Lugo D. 23 n. 90 Mol. tom. 2 D. 262. 3 n. 702 eum non esse obligatum nisi sub levi. And this they have noted. I. D. 6 n. 24 2 p. 556 v. They are nevertheless revealed to require a quadruply greater material cause in making a grave promise than in a mortal theft; for the promisor acts de proprio, but the thief de alieno. The third opinion, which they hold. And furthermore they approve from L.

Juris gentium §. Si cum null. ff. de Pactis, ubi dicitur quod nuda pactio obligationem non pariat. Ethics adheres to P. Concil., tom. 7 p. 637 n. i3, sententia, raro esse obligationem ex justitia in simplici promissione.: Notandum autem est ut certum sit quod quaecunque promissio, etiam acceptata, non obliget si postea promissum reddatur impossibile seu valde nocivum, 30 Lib. III. Treatise. V.

Of the Seventh Commandment of the Decalogue: either illicit or useless; Generally speaking, whenever a notable change occurs in affairs, which if foreseen would have prevented the promise from being made: Because any promise made is always presumed to be subject to such an implicit condition. Thus commonly: qu. 8 c. 4 n. 78 Continuator Tourn. tom. 1 p. 558 n. 5. This is explicitly taught in 2a2ae, q. 110, a. 3, ad 5, where speaking about the obligation of the promisor, he says: If, however, he does not do what he promised, then it appears that he acts faithlessly through this very thing, namely, by changing his mind. A testament nevertheless can be excused in two ways; one way, if he promises something that is manifestly illicit... Another way, if the conditions of persons and affairs have changed: For as Seneca says (book 4). In order for a person to be bound to fulfill what he has promised, it is required that all things remain unchanged. 3. Tamen potest excusari ex duobus; uno modo, si promisit id quod manifestè est illicitum.... Alio modo si sunt mutatae

conditiones personarum et negotiorum: Ut enim Seneca dicit (lib. 4 de Clementia).

They cannot be donors i. Lacking use of reason. 2 Muti et surdi nati, secùs si tantùm sint surdi, vel muti, vel licet utrumque, si nórint scribere. 3. Old men delirium, or twice children, according as if they are of sound judgment. » 4.

Pupils, or minors (except for pious causes), nevertheless their nations in the forum of conscience are valid. (See below c. 4 d. 1) 5. Condemned for a capital crime. Sixth Rule, Third Response. » 4. Those who preside over Cities, Universities, or in almsgiving, But rather if Kings and Princes are excessively profuse in donations, to the prejudice of the Kingdom or state (especially if those things which they owe sufficiently cannot be provided for them, or subjects are unduly burdened by exactions), these can be revoked by the Successor.

» 722. Add. Nor is the dominical power burdened with debts due. But here it is asked whether you are permitted to receive alms from one who is burdened with debts? Lessius affirms in librum 2, caput 20, nota 168 Molinista iuris 2, Decretum 328, Novella 3, caput 4, nota 217 item ip.

Salt. de in Just. B. de n. 316 et 32 D. 1 p. 14 n. 7. They say: you have not sinned against justice, and therefore you are not bound to restitution, unless you were induced to give; know this, because of this very reason he who is thus constrained becomes impotent to make reparation. Reason; because he can lawfully transfer dominion, although he is still the true lord of the thing given in donation; and you have received the thing according to your right by accepting it, for justice does not oblige one to renounce receiving a gift on account of another’s damage, when such an event happens accidentally, and you are not the cause moved to the damage, but only permissive thereof, which does not constrain to restitution. Lessius adds moreover, to which Molina adheres, that one does not sin against charity, because charity does not obligate one to reject one's own mode for the purpose of keeping creditors indemnified.

Nevertheless, the second opinion is truer and more common, which they hold: c. 1 q. 8 p. 2 Lugo l.c., with Cajet Sot. Palud. Ang. Cov. et Reb. ac c. n. 92 cum S. docet, donaturium male fide accipientem omni tenèri ad restitutionem damni, quod obvenit creditoribus. Reason one is because creditors also have a personal right to the goods given, for although in debts personally there is only direct obligation on the person, nevertheless creditors indirectly also have a right to the thing, or to the goods of the

debtor, as more probingly say Lugo d. D. 20 n. 158 Croix l. 3 p. 2 n. 403 and others in the same place. And although the debtor giving the gift is the lord of the thing given, nevertheless (as it is said therefore that which pertains to the debtor likewise passes over to the recipient of the gift).

Reason 2 is more urgent; and it convinces because just as the donor injures justice by rendering himself impotent to pay (which no one doubts), so also does the receiver injure, who positively co-operates; in the unjust damage to the creditor of the act of donation; and a good donor will not be a motive cause, is 22. Book. III. Treatise. V.

Concerning the Seventh Commandment of the Decalogue: however, the true cause of an influxive and efficacious alienation of a thing to the detriment of creditors is that a contract of donation (as we shall say infra n. 725) does not consist solely in the will of the donor, but also in the will of the recipient, by which the contract is constituted; and without it no alienation, whether donation or otherwise, exists. It must however be noted here that according to positive law creditors shall within one year from the day of knowledge have an action against the recipient either for a profitable or onerous title; for the recovery of the thing knowingly accepted into their fraud, without any restitution of price, according to L. Because wrongdoers, l. Whoever however, §. Similar, ff. Wherein there is fraud, etc., and l. penult.

Code code title. It must be noted that nothing can be received under a profitable title through the last will of the debtor to the prejudice of the creditors, according to the law. Whoever however, from the same title cited. See: Lugo D. 20 n. 107. 723. Add: between spouses, although other contracts may be valid according to L. 5 ff. de Don., in the case of a donation between husband and wife, the donation is nevertheless of no moment, L. 2 § Secundum. ff. eod. tit.

Tamen coniux potest retinere vel distrahere rem donatam, si donans sciat et non contradicat. Thus 6 D. 11 num. 2 and Villal. However, such a donation is always confirmed by vow, as . 2 cap. 18 num. 88 Salmant. num. 101 with d. num. 101. On the contrary, from the beginning the donation between spouses is valid if it is remunerative; either because of a cause of death, or if by making such a donation the donor does not become poorer, nor the donee richer; likewise, if the husband is prodigal, or if the wife donates to her husband so as to acquire some dignity, etc. See . 102.... 724. Furthermore, invalid is the donation between Father and son still remaining under paternal power, according to the second book of the Decretals concerning ineffectual donation.

But it is common that a donation is confirmed either by a vow or by death: of the Father. On the contrary, similarly it is valid in cases as those above mentioned: for donation between spouses; or if there be a cause of studies, such as marriage; or if the son be merely natural; or if the father gives a gratuitous profit to the son. These nevertheless are understood, unless the donation be officious (see no. 740), namely, harmful to other legitimate children, or creditors, Sylv. Turpia et « 5. The donation made by the father to his son for the cause of studies is valid; nor is the son bound to reckon in legitiumam, firstly because it was in lieu of alimenta; secondly, because if it were subtracted, it would no longer be a donation contrary to the hypothesis.

But . Now, if nevertheless there is no agreement regarding this, it must be presumed concerning the father's piety; hence such expenses are not to be reckoned in the collation of goods after the father's death, nor should they be given to the common fund unless the father has publicly declared his wish to be counted in the legitimation. And likewise Wading. From the law if Father two enactments dissolve the family * (See note 955.) * 6. If the Father purchases the office for the son, the price should be reckoned in the division with the brothers: but not if he obtained that gratuitously from the Prince; nor those things which are given to the son with a view to the merits of the Father, because they are quasi military spoils, Mol. 6 R, 127 and 128.

» 7. Donatio ante acceptationem non parit obligationem nec naturalem quidem; potestque revocari, etiam si voluerit se absolute obligare. Presently, and donations made previously are considered accepted by him, because in favorables it is held for consent; but on the other hand no one can accept unless with special commission, except if a donation is made to the Church or to a pious cause; for this to be valid without exception and irrevocable, it is probable that C. R. 106 and p. 3 t. 5 Res. 107. In many cases, however, provided that the words are directed to the present, a father or mother can stipulate for a son, even an emancipated one; a tutor for a ward; a curator for a minor; a son of the family for the father; a servant for the Lord; a monk for the monastery; nay, according to many, anyone who has charge of another's affairs, such as a Prelate for a Religious, a husband for his wife, the Lord for the servant, etc. Then the same law permits judges and public notaries to accept donations before acceptance. This is a common opinion (whatever they say 116), that donation does not impose any obligation before acceptance, as Lugo says in Contr.

D. 23 n. 38 Tourn. de quadam p. 3 c. 18 q. 1 Concilii tom. 2 l. 9 cap. 4 n.

53 v. I spoke in chapter 3 of Annotations 2, chapter 18 number 34 of Soto on Justice, book 3 question 3, part 1, decree 6 number 10 and Prad. Tapia, et aliis. And this is more true, as Lugo and Sol. Absenti prove: in the case of a gift, if the donee does not know the thing which is with him as having been given to him, the giver is not made lord of the thing given, even though it was sent by his servant to whom it was intended to be given; unless the mind of the said servant has been given so that it immediately becomes his. The reason is that a contract cannot be concluded without the consent of both parties; as the most learned and wise Cardinal Lugo has wisely reasoned, no one can acquire any right in alien matters by natural law without the consent of its owner; hence, without acceptance of the donation, no right is transferred to the donee regarding the donated thing; and therefore, since the donor remains immune from any obligation before the acceptance of the donation, he can indeed revoke it at his own will.

Neither does it hinder l. If silver, §. final. If however. C. de Ner. ambigi. ff. de Don. ubi habetur, donationem absentibus factam satis valere; respondetur enim (ut explicat Glossa) id intelligendum, cum donatio accepta fuerit per Epistolam aut Nuntium aut Servum, ut habetur in l. If anything, according to the Decretals, chapter 13. And even through an interposed text 4 C. eod. tit. et l. cit. n. 6, for in the first text it is said only that a donation holds by a mere pact, although no stipulation has intervened, which cannot be denied: But there nothing is said of a non-accepted donation.

In another text, it is discussed concerning Benefices, where it is said that if a Bishop confer some Absolution or Benefice upon a Cleric without his knowledge, he cannot revoke the consecration; but there is another kind of Benefice with regard to which the Bishop has no other power than that of conferring, and therefore having conferred it, he cannot revoke it: whereas donation is something else, which has no validity before acceptance. However, it is to be adverted with reference to L. 1 D. 6 n. 11., and Villal. D. 3. n. 4, quod si donatio facta sit infantibus, valeat ipsa etiam ante acceptationem donatarii, quia pro infantibus lex ipsa acceptat. The same is taught in no. 36. and no. 2. concerning the donation made to the City for the repair of buildings. But inquire whether a donation made to pious causes before the twenty-sixth day of acceptance is valid?

They affirm as above with Laym and Diana. Likewise, chapter 1. D. 6 n. 16. The reason for these is that acceptance is required only by positive law and civil law; not however by natural law and canonical law. But more probably they deny with 69. cum. Afterwards it must be said, if a donation is made to God, namely: I promise God that I will give such an Church,

etc. Because, when the intention is conveyed to God, then the donation counts as a vow, as Sanchez says, and .

Rose. They nevertheless note Chapter 26. III. Treatise. V.

Concerning the Seventh Commandment of the Decalogue: It is said that a donation made by the Church can be accepted by any particular individual in the name of that [donation]. Moreover, Lugo notes in the same place, and yet in that case the Bishop might still dispense from such a donation already accepted, without the consent of the pious place? It is probable, see on Vow, n. 255 v. Doubt. 727 Question None. Whether a donation confirmed by vow can be revoked before its acceptance? He denies it, chapter 1, note 3, when speaking from the perspective of the Mother, book 1.

D. 7 n. 24. . 2 n. 3. cum ibidem n. 70. cum quia juramentum sequitur naturam actus, scilicet donationis, qua de se revocabilis est donec acceptetur ex lege finali, C. de non pecuniarum n. 728. A donation made to an absent person may be revoked if it is done by means of a messenger, until it is accepted before the messenger: for merely accepting it before others is not sufficient; 2. c. 18 n. 43. art. 2 num. 9 cum Sancio et pluribus contra Sylvacum et alios. If however a donation is offered by letters: At n. 43 and they say, it is required that the letters or a notification of acceptance be sent back, so that the donation may be valid. Ques. 3 whether after the death of the donor a donation can be validly accepted; Distinguit 2 c. 18 n. 44 vers. You shall strive when urged. If a donation has already been made, and the donor sends a message or a letter before his death, then it is considered that such a message or letter can be accepted.

Reason, because the donation remains virtually in the letters, or with the sent message. And the same is probably held by Sanch de Matrim in librum 1. D. 6 n. 5. and Lugo D. 23 n. 75. et 81. art. 2. But they deny this more probably, Lopez, Isern. Tirag.

Decius, et alii apud . censet hoc probabile quia post mortem donantis nequit voluntas ejus uniri cum consensu donatarii ad acceptationem requiritur; hic dubium oritur: an donatarius possit rem retinere si donationem acceptaverit post mortem donantis? From these opinions, both being probable in my judgment, I infer that if he accept it in good faith and has already acquired legitimate possession thereof, justly may he retain it. Accordingly, if with evil faith, or with doubtful faith, according to what is said in n. 761, where we held that it is not possible with doubt, even with a positive act, to commence the aforementioned legitimate

possession. If however, as Lugo n. 75 73 ibid. states, the donation has not yet been made but is a command that it be carried out by the nuncio, through him and also with a gift sent, then after the death of the donor the donation cannot be accepted any more; ex l. Among causes ff.

Mandati etc., ubi expressè declaratur, mandatum expirare post mortem mandantis. Nevertheless, Sa says that a donation can be accepted, because this mandate being some kind of grace does not expire with the death of the one who gave the mandate; and this, and... as Sporer says, and 3 t. 2 n. 220, they reasonably consider it probable. Hence, according to the first opinion, they say that Croix l c. et cum Mol., that if the thing entrusted by reason of culpable negligence has not been delivered before the death of the mandator, the messenger is bound to make double restitution, namely to the heirs of the deceased on account of the thing which pertains to them; and to the donee on account of the damage incurred. But according to the second opinion, it is held that the donee is bound only to restore, as Sa says v. Donatio, Tambur. l. 8 t. 4 c. 1 § 5 n. 11 et probabile putant Sporer et . c. Advertendum tamen cum Lugo n. 78.

Mol. ac. ex ead. l. Among the causes, that if a donation was made by a messenger, unaware of the donor's death, both the messenger and the donee then the donation would be valid, as clearly gathered from the same source. Among the causes, where it is subjoined: Nevertheless (the command), if fulfilled through ignorance, competes with the action for utility on account of the cause. It is inquired. Whether, after the death of the donor before acceptance, his heir can accept the donation?

It is affirmed in Book 28, Chapter 28. III. Treatise. V. From the Seventh Commandment of the Decalogue, at that location number six with Molina: They nevertheless deny probabilism 2, chapter 18, note 35 and et et Rebell.

Because the hereditary succession yields to real rights of the deceased, but not to personal rights, such as the right to accept a donation. However, it is conceded "8" 732. Even though you accept a verbal donation whereby "Caius, for instance, gives an ass to someone absent; you do not acquire the right in the thing, and dominion over the ass before the act of delivery. Wherefore, if meanwhile Cajus should sell or give him to another and hand him over to that other person, he acquires the dominion; but you have an action against Cajus for injury according to the reason of law, which you had against the thing itself. Thus, such a pure verbal donation before real transfer, that is, before the tradition of the thing, scarcely differs from a promise, as 2. 733 states.

Donation, like the remission of liquid debts, whether made once or several times by one or more acts of will, exceeding the sum of 500 solidi (which sum today amounts to about 700 or according to some even to 800 Italian gold coins, as noted by Claro, etc., in 3 tr. 4 c. 12 n. 15), does not hold that this excess may be reclaimed at the discretion of the donor by law so ordained for the common good. Receive except where the donation has been insinuated otherwise than by word of mouth, or confirmed by oath, or made for pious causes, or for redemption of captives, or for the repair of buildings destroyed by fire or ruin, or is compensatory for benefits, or intended as compensation for debts, at least in expectation, or finally given to soldiers by the leader of a war from movable goods of his own or enemy spoils. Vide. c. l. 2 c. 18 n. 102. 3 t. 4 c. 12 n. 15. Tanner. d. 6 de 2 n. 15 ex si non repetatur, potest. » to retain.

See authority cited * (The same is said of the donation of all goods). * » 10. If a condition is attached to a donation, either tacitly or explicitly, not in order to obligate, but for some other reason; or if the donor intends thereby to induce the recipient to consent, the donation is valid even though the purpose does not follow: e.g., if someone gives something to a girl with her consent to elicit her consent: if she later refuses her consent, he is not bound to return it; for although he would not have given it had he known that she did not consent to him, yet he gave absolutely without any other obligation, as is supposed. It would have been appropriate if he had truly intended to oblige her and had given her under this condition. 16 and 17. Thus. 2 c. 18 n. 124. et Question NoneII.

But rightly do they observe that a girl receiving a gift after an illicit request is difficult to excuse from the sin of scandal, according to St. Thomas. Lessius adds in his work with Molina: that if a legacy be left to the girl so that she may marry, it can be withheld from her even if she remain unmarried; and, if she die before marriage, the legacy shall pass to the heirs of the girl. When however the donor intended to obligate someone to some end, if the end is principal, the donee must provide that, unless it be impeded by another. Si vero finis sit secundarius, tunc donationem non habet irritiationem, sed potest a donante irritari. Thus it is asked whether one who promises prodigally something fornicative because of copulation is bound to fulfill that promise after the copulation?

Lugo and Fill. de Quìà affirm that with a valid promise, then the donation is due, not prodigal. But Sotus and Bann. n. 167 deny this more probabily, even if there be a vow, because the promise does not remove the illicit prodigality of the gift; therefore, the thing promised must be reduced to equality according to common estimation, and if the thing is worth 30 Lib.

III. Treatise. V.

Of the indivisible Seventh Commandment of the Decalogue, nothing is due. See what is said concerning the Mother. I. 6 n. 851 v. When however. Nevertheless, it must not be denied that an honest woman can receive as much for the use of her body as is taught in 2 c. 14 n. 53. « 11.

In similar elective donations someone can accept them, for instance the aforementioned girl, even though they do not intend to provide what the donor hopes, since the donation is made with the intention of enticing, not obligating. Wherefore, if frustrated by hope, he repeats it, saying that he did not give except under such an obligation, the girl is not bound to believe him: because thereby itself, what the donor has not expressed as a condition, is presumed without it to have given, and to repeat either with the intent of revenge or to extort consent. R. 40. 37 12. A donation is not binding on account of a past cause, or of a present cause which truly does not exist; for instance, if I give you something because among my reasons you have transgressed: or because you are poor, and really it is not so; to hold otherwise would be to maintain an error in the formal cause, and in the principal reason. Wherefore those who lie, being not poor, ought to restore alms to other poor men.

» It is something different if the error lies merely in a secondary cause; for instance, if they are truly poor and yet pretend additionally to sanctity, seeking to provoke men's compassion: because then the primary intention of those giving is to give to the poor. Bon. . 6 R. 89. » It teaches however, chapter two, note one hundred and twenty-nine, that if the error lies around the secondary cause, although the donation is not blameworthy, it remains blamable from the donor's perspective; rather, if the donor himself is the cause of the error, he is bound to correct the error, unless the donor be so affected as to be deemed not to revoke the donation even though he recognizes the error. In dubio autem ait. Vid Sed Croix n. 61 adhæreth DUBIUM III.

In quibus casibus donatio possit revocari? 738 Si autem donatarius sit ingratus, quid? 739 Si post donationem nascatur proles donanti, quid? 740 Si donatio fuerit inofficiosa, quid? Resp. 1 Donatio inter vivos, hoc est, quicumque vult se vivo rem absolutè alterius esse, potest revocari (etsi res jam tradita sit) in tribus casibus; nisi tamen donatio fuerit remuneratoria, aut facta sit Ecclesiae vel Monasterio. These are however the cases. » If the donee be excessively ungrateful: as if he inflict cruel injuries upon the donor, if he do not relieve the needy in poverty, etc. What is to be noted for children, whose parents have given them everything and thereafter neglect them. Sylvest.

c. 17. d. 12.* (Add, if the donor were to commit adultery with the wife or daughter of the giver. V. ») * The pact is invalid such that the donation may not be revoked on account of ingratitude, according to Bartol. et alii 8. However, ingratitude must be proven before a judge, by whose judgment the donor is not bound to restore; but it cannot be revoked by heirs for those reasons by which the donor himself could have revoked them if he had known and kept silent about them; otherwise, if he did not know, then revocation also has place in respect of legatees, if the deceased testator was grievously injured thereby, e.g., if his wife was carnally violated. » 3. Non habet autem locum I. In donations made to the Church, even though the Prelate or Cleric was ungrateful because it was done for the good of the testator's soul, and principally for God, who cannot be ungrateful, in a remunerative donation (e.g., for benefits otherwise not due, and somehow equivalent), because it is rather a matter of recompense than of gift.

Remuneratoria autem censetur i. si donator in ipsa donatione expressè meminerit meritorium; vel 2. si de meritis constet; 3. in dubio, ex Si quis prole carens magnam partem bonorum donaverit et postea nascatur proles: quia ex juris dispositione inest donationi hæc tacita condition, nisi nascantur mihi liberi. And verily, si facta sit extraneo, revocari potest tota: si alicui ascensus liorum, ut patri, vel avo, vel Ecclesiæ, aut causis piis, tantùm revocari potest, quantùm necessarium est, ut filii habeant legitimam. Although Lessius rightly notes that it is expedient for the purpose of edification, that which has been given to the Church or monastery should be restored by the prelate. Nevertheless, even though he may have sworn not to revoke the donation, he can still revoke it if born of legitimate offspring; because this oath does not entirely exclude the condition. Receive it, unless he has expressly and also excluded this condition: for then himself he could not revoke; yet his heirs might revoke after the death of the father, according to Bon. 14.

An autem haec revocatio habebit locum, si filii nascantur illegitimi, qui postea legitimentur? Moreover, concerning the promissory gift, the thing itself. Whereupon when Mol. and others six deny it, unless the cause exceed, (the donor may nevertheless retain the thing given, until it be reclaimed by the donor,) chapter 18, number 110, clause 2. If the donation has been made in an officious manner, contrary to the duty of paternal piety, as when a father merely gives so that the children are deprived of their lawful portion: then after the death of the father, the children can revoke it, even if the donation has been confirmed by vow, according to the aforementioned location. Likewise while the father is still alive; for although before the death of the father what is lawful should not be given,

yet it should be preserved as something that ought to be kept. Hence, if the father dissipates goods, he can be compelled by a judge to preserve the legitimate portion, so that the son does not lack sustenance after the death of the father.

Ita probabiliter, etc. An autem et quandùd donatio rescindenda in totum? vide Notandum, quòd donatio, si est inofficiosa tantùm re, infirmetur quòd partem, in qua filii fraudantur: Si autem re, et consilio, scilicet animo fraudandi filios, tunc tota infirmatur; quandù fit extraneis; quando vero fit aliis descendentibus, vel pius causis, etiam quòd partem tantùm infirmatur. 2 cap. 18 n. 112 et 7 Resp. 66 P. Concina tom. 7 pag. 441 n. 13 Cabass. lib. 6 cap. 29 n. 1 ex Bartolo lib. 1 D. de Sítotas 5 acl. If Mother. 7 C. same title. But it should be noted that the donor in such a case is not bound to restore the gift to the children before the judgment of the judge. Thus, when. Then it must be noted according to 3rd treatise, 4th chapter, 12th note, number 18: Cardenas with Lop, Vega, Cord. among Croix book 3 page 2 note 812 say: A father can appropriate his own goods for pious works, even to the prejudice of legitimate children, provided that they are not deprived of their natural rights to sustenance. For civil law does not permit such harm to be done to holy causes.

But to this opinion they contradict. Both sentiments seem to be probable. 6. By reason of the supervenience of children, as Diana more proba- bly affirms on page 8, section 6, rule 78, from others against certain individuals. If however the father has not retroceded, then he does not owe . 94 Lib. III.

Treatise. V. Of the Seventh Commandment of the Decalogue. "test à filiis postea natis revocari, nisi pro ratione Fàlcidiæ, sive ex testamento, sive ab intestato suc- cesserint, ib." translates to:

"the testament of those subsequently born children is to be revoked afterwards, unless it has been revoked for the reason of Falcidius, whether from a will or by intestate succession, there." » DUBIUM IV. What is a donation made on account of death? And whether it can be recalled? And how, and to whom, does it pertain? When is a donation made on account of death considered revoked? Does this donation hold in absentia? Who can make a donation on account of death? Resp. 1.

A donation made for causa mortis, by which one gives in such a way that he wishes the thing to be another’s first after his own death, namely death, if you say, I give this to you after my death, or when I shall die, or because I fear now that I shall die, can also be revoked in three cases: (in dubio

donatio est censenda inter vivos, et irrevocabilis, Lugo, Prado, Sylv. c. 4 n. 113.) Si donatorem peccaverit, sive expressè, sive implicite, ut si rem illam donet alteri, si dedit intuitu aliqui instantis periculi ex quo metuit mortem, hoc ipso quo periculum evasisset, censetur tacite revocata donatio; ut si quis det. » In a serious illness, or imminent battle. 20. » 3. If the donor dies before the donee, ipso facto.

» it is revoked by law: just as also happened in wills and legacies. » So it is in a promise and a donation inter vivos, which passes to the heirs. If, however, the donor promises that he will not revoke the gift, it passes to an inter vivos donation. See 14 n. 116 Mol. d. 286 et d. 288 . ii c. ii g. 4 Bon. l. c. Nec valet in absentem sine nuntio; ad hoc destinato vel epistola: licet valeat ut fideicommissum si fuerint adhibiti testes. Valet autem probabiliter etsi donatarius praesens tacuerit. I respond 3.

All can give by reason of death, except those who cannot testify, namely the filio-familias, who, although he cannot in any way make a will, since this is of public law, yet he can nevertheless give by reason of death, which is of private law, if the express consent of his father be present: otherwise it would not be probable that he could give such things both to those in service and to adventitii. c. Reg. 68 et 69. * (If indeed the son has been given permission by the Father to have use and administration of these things, as . 3 n. 116 with .) * Hence minors of twenty years can give thus even without the consent of their curator. c. Res. 71 ex Mol. et aliis. » 4. Not however a usurer, unless he has first made sufficient satisfaction in usury, or given security; yet he may be admitted to pious causes, . R. 73 ex . » Neither a natural deaf-mute nor one who has become such by some accident (if he is merely deaf or mute) may lawfully give to others while alive according to certain ones. » 12. V. DOUBT.

What is a Commodity, a Loan, and a Deposit? 744 What is a Commodity? 745 What is a Loan?

And when shall the Precarium cease? What is Depositum? See cases concerning the Commissary. See regarding the Depositor. How shall the Depositor be held culpable for the use of that which is deposited, and what is he bound to restore? Whether these are held liable only by reason of legal fault? To what purpose are craftsmen bound, to whom things are delivered? In case of doubt, shall presumption fall upon fault? 35 Lib. III. Treatise. V.

Concerning the Seventh Commandment of the Decalogue: 752 Who is bound to save another's property rather than his own? See also ibid., p.

753: In what cases may the trustee refuse to return the thing deposited? Res 544 a Resv. A loan is a contract by which something movable or immovable, so far as regards use alone, is gratuitously conceded to another, and is determined for some definite time either explicitly or implicitly: explicitly, as if you say, I lend you this book or house for one month; implicitly, as if you say, I lend you the book that you may describe it; because then only an implicit determination of time is made, so much as is necessary to describe conveniently. A precarium is that by which a thing is conceded to the petitioner for use, not for a certain time, in which it differs from commodatum, but until the giver recovers it either expressly or tacitly, as if he gave it to another person or sold it.

». Precarium ceases through the death of the receiver, not through the death of the giver, unless it is revoked by the heirs, L. When a precarium ends, ff. de Prac. V. q. 9 art. 2 n. 9. « Depositum est quo aliquid traditur custodien- 746 dum ut integrum reddatur. » And commonly a thing is said to be movable or self-moved, such as clothing, a horse, etc. Hence these matters are resolved. » 1.

The commodator cannot repeat [or reclaim] without justice ante defined time. Laic. 1. 3 t. 4 » c. 14. » 2. And if nevertheless the damnum be incurred by him to whom the commodate is made, he can demand repayment, even though a similar damnum have been incurred by the commodatary before the time for repayment, as it is stated in 5 because in commodation there is understood this tacit condition, unless meanwhile something necessary has become for the commodator, Cap. III. Doubt.

V. concerning Contracts. Note according to no. 7 that in a commodated matter ordinary expenses should be borne by the Commodity Borrower, such as feeding the horse, etc., while extraordinary expenses should be borne by the Commodity Lender. ex l. In things pertaining to deposits, "If the bailee in good faith considers that the depositary has no rightful claim, if he makes use of the deposited thing, it will be permissible for him to make use of it; otherwise not." c. d. 2. 4. If the deposited thing is a consumable used up by use, such as wine, money, which when exposed to sale are diminished, and if these have been delivered in a certain number, weight, and measure, it does not seem that the depositor sins gravely, provided he uses them with due care; if he knows this.

» to be of the same quality when it is repeated ». » Sylv. It is likewise cited in n. 4 with Mol. vers. It notes. Then it must be noted that the Depository, acting in bad faith and using the deposited thing, is bound to restore the value of use; but if he uses it in good faith, he is bound to what has been damaged, provided he understood that this displeased the lord. Thus,

according to Hurt.

When however the lord shall have granted the use of a consumable thing even tacitly; then the deposit passes over to a loan according to common opinion. At least when the depository uses the actual thing with the consent of the lord. But if that to whom the thing has been commuted, placed, deposited, and pledged negligently guards it in such a way that it perishes, and yet the negligence is not a mortal theological fault, it is probable that what I said according to Soto, Sa, should not be held for restitution in conscience. (As also the Salamanqueses hold, de Roncaglia, Cabass., lib. 6 cap. 9 n. 2 etc., see the mentioned n. 554.) However, others have a different opinion, namely that it should be restored, who hold that a juridical guilt is contracted in guarding if it has been grossly neglected; and even if it were negligently only slightly so or very slightly sometimes, excessively when deposit was made for the benefit of both parties, although he may receive a reward for the custody. See 8 Laymann tract. 4 cap. 25 where it is taught that the depositary is bound only by fraud, or gross negligence which would equate to fraud. It is said that a legal fault is called broad or gross when one does what men of his profession would least likely do or omit in that matter; for example, if someone leaves a thing deposited with him in a public place, even though he might not have been negligent. Levis autem dicitur, cum quis facit vel omittit, quod faceren, vel omitterent homines suæ professionis diligentes, ut si quis depositum relinquit in suo cubiculo, sed negligit ostium claudere.

Levissima dicitur, cum quis facit vel omittit, quod non facerent homines diligentissimi; ut si quis ostium quidem obseraverit, sed neglexerit tentare manu, an esset bene clausum. 5. Levissima dicitur, cum quis facit vel omittit, quod non facerent homines diligentissimi; ut si quis ostium quidem obserârit, sed neglexerit tentare manu, an esset benê clausum. Sartoresses, molitores, et cæteri artifices, quibus res traditur polienda vel immutanda, item nautae, cauponês, apud quos res deponuntur, tenentur ex levissima culpa, quia depositio fit etiam in commodum ipsorum; imò Sylv. v. Sailor, desires that they be held for a slight fault: from lib. i ff. Deposited, and this is to be guarded against in order to avoid their frauds.

That is also: if he has deposited it merely before his own eyes, for instance in a tavern, on a ship, etc., even then not to be held. Vid Bon. » 6. If the depositary (who is also the commodator) doubts whether the deposited thing has perished through his own fault, there is no necessity in conscience to restore it, according to book 2, decision 41, note 18, because in doubt a crime is not presumed, according to law. Worthily. For a partner. By vote.

In externo autem foro, si res depositarii manserint incolumes, praesumitur de dolo, nisi depositarius probet depositum casu periisse et non potuisse simul cum rebus suis (imminente, gr. incendio) servari: tunc enim non teneretur, quia praesumptio doli cessaret. See. i de, Cens. d. 3 p. 4 I. ## Chapter III. Dub. V.

Of Contracts. This is distinguished from the general rule with regard to . 754 n. 2. When a thing perishes through fire, shipwreck, etc., if the contract is in favor of the giver and the thing is of lesser or equal value to yours, then you may prefer your own thing and save it: but if the other person's thing is far more valuable; in that case you can ask for compensation for your lost thing. Si vero contractus fuerit in commodum tuum, rem domini praeferre debes, nec potes petere compensationem, «7.» If the master, having reclaimed the deposit, has remitted it through a man who was considered faithful, and he either withheld it or lost it, the Master says that it perished. Molina.

Cited by Escob. V. . c. 8. The depository, being a thing laid aside for use that is not consumable, can receive something from the depositor for its use; because it is estimable in price (although in that case not of deposited property, but rather of hired and conveyed goods, it should be called a contract). Secondly, if it is a thing used up in use: for then, by the very fact that the depository begins to use it, it assumes the nature of a loan; from which (severed from the reason of profit ceasing), nothing can be received, as v. dub. seq. and Bon. d. 3 q. 13 p. 3 c. indicate. Here it should be noted that the depository can refuse the deposit to the lord in four cases: 1. If by sentence all the goods of the depositor are adjudged. 2. If he comprehend that the thing is certainly stolen property.

If he himself have a certain cause for compensation. 4. If prudently he suspects that it will be abused against justice with the thing deposited, for example, a sword to kill with; because then he would sin by returning the sword, contrary to charity, according to book 2, chapter 16, decree 4 contra Molinists, who think more truly that he would also sin against justice: because he would cooperate very closely in the murder. See the aforementioned n. 697. I said however that he should prudently fear; for in doubt, or where there is equal probability of harm, the sword ought to be restored, unless the master be mad, so says he. But I do not acquiesce to that at equal probability, for even the nearest and also 60 Lib.

III. Treatise. V. Of the Seventh Commandment of the Decalogue, it possesses the right not to be harmed in life, whence it seems rather more important to guard against the evil that is greater. It is doubtful whether the same person would run if the lord were abusive not contrary to justice,

but contrary to other virtues?

They deny; yet still it would be one who sins by not retaliating, according to Les, ibid., when S. says on page 697: Unless by not retaliating he fears great harm, then indeed he still sins against charity. DOUBT VI. What is a Loan? 754 How is a loan distinguished from a permutation, a pig, etc.? 755 When should a loan be returned if no term has been prefixed? 756 Can a loan given to the Church, University, or Minor be repaid? 757 What if it is given as a gift? « Resp. It is a contract by which the constant dominion over something in number, weight, or measure is transferred from the mutuante to the mutuariem, together with the obligation of restoring the same or an equivalent in kind and quality. Properly speaking, mutuum is almost exclusively found in consumable things, among which is also money: which, although it neither consumes itself nor perishes in itself, nevertheless suffers diminution of quantity; and this distinguishes it from permutation, because in that the thing of another kind is returned; likewise from pignoratio, hypothecation, deposit, commodatum, and locatum, because in these there is not a transfer of dominium, but only use.

Bonacín. disp. 3 q. 3 p. 1. Wherefore it is resolved. 1. He who borrows is obligated to warn about the vice of the thing, otherwise who is bound by conscience regarding damage. » 2. Mutuans obligatur monere de vitio rei, alio qui ad damnum tenetur in conscientia.

Item non redit re reddita antequam sit tempus, nisi ipse sit in pariete necessitate. If a term for restitution has not been prefixed, then when you are requested to return the loan: Understand after some time, at the prudent judgment of competent arbitrators; otherwise, it would more harm than benefit you to demand repayment from the borrower. Even in cases of tenures, it is not permitted to return them if they are not requested for oblivion, reverence, or distance: However, a lender who does not request repayment, yet is able to do so, is considered to be yielding to delay. Thus. 8 c. i5 n. 2. cum Salmanticens. de « 3. It is held that to lend a fortuitous occasion more carefully is bounden, since it pertains to this matter's dominion, and to render the same thing in like manner and quality at its proper time.

In verbo vero accipere aliquod mutuum lucrum non licet, quia est usura, de qua dubium sequitur. But here it must be noted that a loan or gift for the sake of piety, or for the University, cannot be repaid; unless it is proven that it has been turned to the advantage of such. City mm. If a certain thing is sought. And the same is said about a loan given to a minor, who otherwise is not bound to return it even if made over to someone of

greater age, lib. 3 C. When factually tutored.

If nevertheless the Prelate, with the consent of the Chapter (and this is also said of the Governor with the consent of the Officials), receives a loan in the name of the Church, it always holds itself bound to repay; since Prelates can properly alienate movable goods of the Church with the right authority. 2 c. 20 n. 13 . n. 6 cum . and Note also that a loan given to children and destitute soldiers, 757 so that such things, lacking in good standing and means, after being repaid by them, should not be considered repayable at least in external forum, 1. 1 C. de S. C. Maced. By what privilege sons can avail themselves, even though they renounce it, if a loan is made in other things than money, namely concerning which law speaks. It is excluded. If the son has sworn to pay: even though he may have an action for repayment after payment, nevertheless relaxation of the oath can be procured for himself. n. 8. Excipitur 3.

If a loan has been given, knowing and without consent: even though after the giving he retains the action to demand repayment: nevertheless, he can procure relaxation of the vow. Lib. 42, n. 8. III. Treatise. V. Regarding the Seventh Commandment of the Decalogue, if it is handed down by the father, or if it has been turned to the advantage of the father or children in matters which the father was bound to provide for them: likewise, if a thing lent still remains; or if the father was accustomed to discharge debts of the children; then the question arises whether the children are free from the obligation of restoring the loan not only in external forum but also in internal?

They deny it because the Civil Law does not abolish the natural obligation. It is sufficiently probable that it affirms 10, namely, that the law can justly take away a natural obligation with a good cause, and thus it is judged to have acted in this case for the prevention of harm to parents and the avoidance of usurious practices: It does not seem capable of being denied that supreme human power, by reason of its high dominion, can properly for the common good transfer the dominion over things from one person to another, as is evident in the law of prescription: See dict. n. 517. ## DUBIUM VII. ### What is Usury? When is usury committed? Is usury evil by natural law? Can the lender demand anything if obligated to wait for a long time for repayment? On mental usury. Qu. I. When from it there arises an obligation of restoration?

Qu. II. Can he who exchanges one loan for another retain that about which there is doubt, namely whether it is given gratuitously? Is it permissible to give a loan with hope of gain? Can he who lends retain what he has lent out of fear, so that no other loan be denied him in the future? Can an

antithetical obligation be reduced to a contract? Can anything be demanded on account of risk of chance? What about the Mountains of Piety? 766 Is it permissible to have a penal conventional pact? 767. Whether a penalty is due before the sentence? Whether and when something can be demanded on account of consequential damage, Chapter III.

Dub. VII. Of Contracts. 45 or because of Profit ceasing? 769. How many conditions are required for this interest to be demanded? In contractu oporteat monere mutuatuarium de damno emergenti, vel alio justi titulo?

Can the lender extract such interest if he himself offers to lend? Can it be lawful for the lender to agree from the beginning to sell a certain sum of money for damage or uncertain profit? Can you demand discontinued profit by substituting another sum of money that is not necessary for the transaction? What if you say: I would have engaged in the business, unless there were those seeking a loan? What if a just title existed for demanding something, but the lender in good faith entered into a usurious contract believing it to be lawful? Which agreements are permissible in lending? Is it illicit for the Law to commit oneself? Whether the fruits of a pledge ought to be restored? What if a pledge has been given for a dowry? 777 Does it hold that something should be returned as debt, but not out of justice? Is it permissible to desist from an injury? Is a pact valid by which an injury is forgiven? Is there a pact whereby service is rendered? Is there a pact whereby debts are paid out of gratitude? Is there a pact for exchange of loans? Is there a pact whereby something is returned in the same species? Does the usurer acquire dominion over the profit of usury? What about the fruits of a consumable thing used up by use? To whom is one bound who gives counsel, or lends money for usurious loan? Would it be wrong to deposit money with an usurer for usury? Do princes, etc., cooperating so that usuries may be paid off, have to return them? Is it allowed the creditor changing his mind to demand usuries? Do servants cooperating with their lords in usury sin? How are the heirs of a usurer bound to restitution? Is it permissible to petition an usurer for a loan? (Remissively referred to 1 2 n. 47 v.)

Secondly, and n. 77 v. 4 Licitum. 791 See other cases among Bus. 792 By what obligation, and full usury? Resp. The profit immediately arising from a loan is: 758 Thus, when lending above the stated rate, that is, the principal sum, one earns something which is estimable in money, such that this kind of profit precisely aims at the reason for the loan. That which is plainly unjust and a serious sin, Lib. 44. III.

Treatise. V. Of the Seventh Commandment of the Decalogue. Contrary to

human law and divine law; when lending, he acquires profit from a thing no longer his own: because the thing lent has already passed into the dominion of the lender, as is evident from the definition. And the general rule is: Every contract or burden added to a loan besides what is proper and intrinsic to it makes the agreement usurious, Bon. d. 3 q. 3 p. 3.

Cardinal Lugo, etc., it is certain that usury is likewise illicit according to natural law, and that nothing beyond the measure of the thing lent can be demanded for its use, as commonly say Theologians and Jurists with St. Thomas 2. 2 q. 78 a. 1 ex c. Super eod. de Usuris. The reason is that, as St. Thomas teaches in a thing which is not consumed by use, such as in a house or a horse, the use can be distinguished from the thing itself: yet in a thing which is consumed by use, like wine, wheat, or money, there is no distinction between ownership and use of the thing, since use involves the consumption of the thing itself, and thus ownership is transferred to the borrower by nature in the loan. Therefore, if anything were demanded for the use of a consumable thing, it would be unjustly demanded, says St., because, as he asserts from common human commerce, we observe many profits arising from money. Hence it follows, with precise just titles of peril, damage, etc., of which we shall speak below, that something may lawfully be exacted from a money loan beyond its stipulated amount, provided that the profit is moderate and the lender sufficiently wealthy, and that he employ that money in increasing his own goods. But this new opinion was forbidden by our present Supreme Pontiff Benedict XIV in an Encyclical Letter, published in the year 1545, which begins: "Vix pervenit, et extensa afferetur in fine...", see n. VII. Certa ratio est, quia lucrum quod recipitur ex pecunia totum oritur, non ex ipsa pecunia, quæ cum omnino sterilis sit fructum parere haud potest, sed oritur ex mera industria hominum: nec pro eo quod mea pecunia alteri proderit ob suam industriam possum ego ultra sortem aliquid ab eo exigere; pariter ac si vendo rem quae emptori valde utilis erit propter industriam suam non possum prop ter hoc aliquid recipere ultra justum rei pretium.

The reason is self-evident, and does not require any other declaration. As for that which is opposed, namely, that God is said to permit Jews to be usurious according to Deut. 28 by sending them foreigners, the Saint responds in chapter 3, note 27, that then God did not prohibit usury, but rather permitted this manner of receiving goods from the Gentiles, which the Lord had freely given to the Jews. Read P. Conc., who in a special volume thoroughly and skillfully refuted this false opinion. These three propositions condemned are to be noted here. First from Innocent.

XI. n. 41. he said: Since counted money is more precious than uncounted, and no one makes present money greater than future money, a creditor

can receive something beyond the measure from the borrower, and this can be excused by usury on that basis. Second from the same. Usura non est, dum aliquid ultrà sortem exigitur, tamquam ex benevolentia et gratitudine debitum, sed solùm si exigitur tamquàm ex justitia debitum. Third from the aforementioned number 42. It is licit for the lender to demand something beyond the measure, if he binds himself not to repeat the measure up to a certain time.

But it is asked, whether one who obligates himself to return the loan without repetition up to a certain time, unless after much time has passed, can demand beyond the limit, even though no inconvenience arises from the delay? There are three opinions. The first opinion is common and denies this, and those hold it: 2 c. 20 n. 127. prop. 42 n. 10. 3 tr. 4 c. 16 n. 7. Lugo D. 25 n. 17, qui vocant contrariam falsissimam, et communiter ab aliis reprobatam. Reason, because such an obligation is intrinsically annexed, mutual and not to be repaid immediately; just as nothing can be demanded from that which is expected to be solved after some time, so too not for such a period of time; otherwise, they say, usury could easily be palliated in this manner many times over, by demanding it not for the sake of the loan, but for the obligation of expecting repayment.

It seems to favor the condemnation of the second proposition alleged. The second opinion states that although in a loan there is an obligation to expect repayment over some period of time; yet when the obligation is one of not repeating this unless after much time, for example, three years, then since such obligation is not intrinsically annexed to the loan, something may lawfully be demanded. Therefore Medina de ap. Henry and Bassaeus, and Sporer does not consider it improbable from the seventh [article or proposition]. Preface c. 4 n. 71.

And this judgment truly does not seem wanting in its probability; for if something can lawfully be demanded (by one who is obligated to lend for a long period of time, as the common Doctors teach with Molina, according to their proposition 42 n. 5), why cannot he who is obligated not to repeat his loan, do so only after a protracted period of time? See below to be said. The third opinion is not much different from the second, which . n. 26 holds with Bann. Prado, Aragonese and Carinthian, says that although by adhering to the first opinion it is strictly required to demand something as usury at a particular time, nevertheless, since it is morally impossible for one who lends expecting over an extended period not to incur some danger, loss, or inconvenience, or at least not to impede the exercise of some act of liberty or another decent operation, therefore, he may receive somewhat beyond measure and agree. But thou mayest say that there is an obligation to await for some time in every loan; hence, as

in a loan for fifteen days there is an obligation not to demand back within fifteen days, so also in a loan for three years there is an obligation not to demand back for three years; because then that obligation of awaiting for three years is intrinsic to such a loan, otherwise the lender would sell his own commodity: Moreover, such an obligation to await for so short a time cannot be reckoned as estimable price, since it does not proceed from justice, but from the same liberality whence proceeds the benefit of lending.

But it may be replied: In every loan there is indeed an intrinsic obligation to await for a certain ordinary period of time; nevertheless, in a particular loan, with a pact to await for an extraordinary period of time, such obligation is not intrinsic but entirely extrinsic; and therefore it does not proceed from liberality, but from justice according to the reason of the contract which obligates to await for so much time. Hence, simulans accipere aliquid pro tali obligatione, rite accipit non ratione commoditatis qua privatur, sed ratione oneris ex pacto sibi impositi, quod onus uteique est pretio aestimabile, ut fatetur ipse Lugo loc. cit. n. 24 cum aliis. You speak the second. It is obstructed by the third. The proposition prohibited above has been previously mentioned from which it seems altogether forbidden to demand anything in the way of an obligation until a certain time.

But it is replied: The said Proposition deservedly was condemned, because by those words it too broadly embraced the expectation of any time period, even that which is intrinsically mutual: whereas there is no prohibition therein concerning something being demanded for the obligation of expecting through an extraordinary time, which obligation is mutually extrinsic. And hereby incidentally it must be noted that certain individuals are led to approve all condemned opinions, which have some resemblance to the damned Propositions, thinking them foolishly proscribed in such a general manner that no exception or just interpretation is tolerated. That is truly contrary to the nature of damned Propositions; for according to the unanimous consent of all: DD., opinions are not to be concealed under veiled clauses in order to introduce any opinion whatever, unless they are expressly contained or virtually present in the proscribed ones. Otherwise, speaking regularly, the damned Propositions are to be understood as they lie, and in a strict sense, and according to the intent of the Author who proposed them. Moreover, certain opinions (insofar as it can be said of that which we are speaking) have been condemned because they spoke too generally, and therefore should not be extended to all particular cases, which are distinguished by some momentary circumstance.

A. Quaedam damnatae sunt omissiones, quia nimis generaliter loquebantur et ideo non sint extendendae ad omnes casus particulares, qui propter aliquam momentaneam circumstantiam distinguuntur. I. Praeter quod quaedam opi-miones (prout dici potest esse hanc de qua loquimur) damnatae sunt, quia nimis generaliter loquebantur, et ideo non sint extendendae ad omnes casus particu-lares, qui propter aliquam momentanam circumstantiam distinguuntur. Sinning grievously by its very nature through such a usury, even if it is merely mental and without an external contract. It is called mental usury, when one intends to receive something from a loan beyond its proper measure, even though it does not express this by an external pact: just as real but external usury is called, when one expresses that intention through some pact. That which is sometimes only implicitly contained in some contract, and is called palliated usura, since the parties pretend another contract of sale, hire, etc., wherein nevertheless truly the usurer intervenes.

See examples among Toletus, lib. 5, cap. 3, iota. Hence it is not a question of mental usury, which exists solely in the mind without an actual loan, for this does not obligate to any restitution: The question, however, concerns mental usury, which is connected with a loan, even though there is an express or tacit agreement for something to be gained above the stipulated amount, for distinction of real usury, which arises from such an agreement. It is inquired I. When from this mental usury an obligation to restore arises? We say I.

When usury is mental on both parts, so that the lender receives profit as a reward for the loan, and the borrower repays with such profit, then certainly the profit must be restored. We say II. When usura mentalis arises solely from the part of the lender, who receives profit as a reward for lending and expects to receive even more upon repayment, then certainly the profit must be restored. We say II.

When usura mentalis arises solely from the part of the borrower, who gives profit as a reward for receiving the loan and accepts goods in good faith as if they were freely given, then he is not bound to restore this from unjust acquisition, but only from the accepted amount, when he knows that the lender did not provide it freely. We say III. When usury is solely from the part of the mutuarius, because he has given gratis and the mutuator has received as a price, then if he knows that he has been generously given, he can retain it. It is inquired about II.

In doubt whether he has given something beyond the limit gratis or as a price of the loan, whether the borrower can retain that? It is certain that a lender lawfully may receive free gifts from the borrower, as all teach with

St. Thomas 2-2 quæst. 78, art. 2 ad 3. But whether or not it is lawful for the lender to give gratis beyond the limit of the loan, as a gift or as payment of the loan, Lessius responds in l. 2 c. 20 n. 45 and Salamanca in c. 3 n. 31 that if the lender received a gift in good faith, he may lawfully retain it even if doubt arises; but otherwise, if he received it with doubt, not so. But what if he has received it with a positive doubt, or with the probability of genuine donation? Sporer admits in his seventh treatise, note 80, that it is possible to retain something on the basis of a probable opinion; but commonly and rightly they deny this, note 3. Continuator Tournely t. 1 p. 515 v.

With doubts, and with Soto, Bonacina, Covarr. Prado, Item, because in a doubt the rule is regularly presumed to have been coerced into lending, since it is more difficult for men to freely give away their own things, as Sporer himself admits, n. 77. Otherwise, in this doubt, it must be conceded to that party for which there is a stronger presumption; from here they add, n. 31. Sporer l.cit. 6. it must be presumed that he has morally given a certain gift as a loan, if he is not poor, or greedy, or if he has not given out of fear, nor out of inconvenience, nor at the request of the borrower. They also say the same to Antonine, if he shall have asserted through writing that he has freely given a gift, unless it be proven that in this writing he has used fraudulent usury.

The opposite is presumed when a borrower before making a donation signifies something as a debt due to him; or if a borrower is poor, or does not usually make donations, or if he repays before the return of the loan: because then it easily presumed that he gave so as not quickly to be compelled to repay the loan. They reasonably consider the same thing. According to "2." Usury is not considered if the lender intends nothing other than to hope for something from gratitude, and in that intention something is given to him; although he may principally intend that as an end. n. 5 Lugo D. 25. It is asked. Whether it is licit to lend money with an expectation of gain, St. Thomas 2. 2 q. 78. art. 2 ad 3 thus distinguishes: If anyone expects or demands gain from the lent money, as if by right.

III. Treatise. V. Of the Seventh Commandment of the Decalogue: The obligation of a tacit or expressed pact, the recompense for service rendered by word or deed is equivalent to expecting or demanding a gift from the hand... If however the gift is not offered in response to an obligation of service or speech, but out of benevolence, which does not fall under estimation of money, it is permissible to accept and demand and expect this. From hence proceeded they.

Caj. and . same Cajet. Prado ibidem cum; sed bene advertunt c. cum Lugo

etc., hoc non carere vehementi suspicione usurae, juxta dicta de Simonia n. 51. Whereby rightly they say Innoc. XI. n. 15. thus lending ones to be ordinarily reckoned as usurers. They feel, however, chapter 3 number 33 and .

But I think more truly with P. Concina, t. 7, p. 462, n. 10, that this is altogether illicit, from the text of Luke 6 where it is commanded: Give wine, hoping for nothing in return. If this text is not explained here at least with regard to this principal hope, I do not know in what other case it can be explained. The reason for our opinion is that, if it is not permissible to lend money primarily for the sake of gain from what one expects to be repaid on loan, it is also not permissible to borrow primarily for the sake of gain. This is entirely confirmed by the example of simony, which proceeds in the same manner as usury: Regarding simony, I have already approved it n. 51 v. Coterum, et n. 54 quod, si quis det temporalis solo intuitu obtinendae rei spiritualis, tunc censeatur habere intentionem saltem virtualiter simoniam, ut patet ex propos. damnata 46 Innoc.

XI quae dicebat, non esse simoniam dare temporale pro re spirituali, etiamsi temporale sit principale motivum dandi spirituale. The same must be said about the mutual exchange; for since a loan is given primarily out of hope of gain, then the hoped-for gain, since it is the principal motive for lending, virtualiter is converted into the price of the loan. And this is clearly gathered from chapter "Consuluit de Usuris," where it is thus stated: Your devotion has inquired whether that usurer should be judged guilty who (not intending to lend to others) trusted in a loan of money with the intention that, although all agreement ceases, he nevertheless might receive more by chance. Indeed, whatever is to be held concerning these matters is manifestly known from the Gospel Light, in which it is said: Give alms expecting nothing in return; such men, because they have an intention of lucre, are to be judged as having acted ill, and effectively induced to restore what has been thus accepted in the judgment of souls, since all usury is prohibited by the Law. Hence wisely said Saint Raymond: He who lent under such a hope, whatever afterwards he received beyond his due, even if given gratis, is usury.

Treatise on Usury § 3. Concina autem dixit bene p. 460 n. 6 minimè peccare quemadmodum mutuantem qui dat mutuum ad captandam alterius benevolentiam etiamsi haec benevolentia sit principale motivum mutuandi quia beneficium gratuitum ex se pertinet ad conciliandam mutuam benevolentiam. But rather, even if it was hoped secondarily for some profit, in such a way that profit would be the urging cause to lend; (nevertheless, if this hope were lacking, the loan would not be given, because then at least the mind of the usurer is presumed). Thus from 2,

question 78, article 2, where it says: If (the lender) receive anything non quasi exigens, nec quasi ex aliqua obligatione tacita vel expressa, sed sicut gratuitum donum, non peccat; and even before he had lent money, lawfully could he have received some gift, nor is a worse condition made by this that he has lent. Remuneration however of those things which money cannot measure, although it may be exacted for a loan, such as benevolence and affection of him who is willing to lend, or something of this kind. And in the Disputation on Evil, qu. 13, a. 4, he says that it is permissible for the lender to hope for such a gift; nevertheless (as we have said), this hope must not be the final cause of the loan; for although speculatively speaking, hoping for profit from benevolence differs from hoping for it from other causes; and hoping for [a certain section] in Book 3.

III. Treatise. V. Of the Seventh Commandment of the Decalogue: although in justice this is easily confused in practice, it is questioned II. Whether he who receives on loan can retain what has been lent to him not out of mere gratitude, but out of fear that another loan will be denied to him in the future, or lest he be esteemed ungrateful?

They deny Cajetan. Molina, but they affirm. 4 c. 16 n. 1 Lugo c. 3 n. 35 because according to St. Thomas and common doctrine, it is required for usury that something be given either by virtue of the pact or as a debt of justice; but giving out of such fear does not make it so, since it is given not for reward: For the law of lending does not prohibit that one not wish to appear ungrateful; although Salmantica, although at first they say that such a donation is hardly usurious, because it is rarely presumed to be merely voluntary, yet later adhere to their first opinion, saying that if the donation were truly gratuitous, it could properly be retained: For even though it would otherwise be involuntary, it does not thereby irritate that which is otherwise involuntary, since it does not proceed from an external compeller but from an intrinsic necessity or the will of the lender himself. Ita Prad. et Soto, qui advertit discernendum semper esse, an mutuans recipiat ratione amicitiæ, vel an ratione mutui. « 3. That is, if he were to understand that something had been given to him not freely, as he thought, but as a debt on the basis of a loan, he would be bound to return it in proportion to what he was deemed to have received, according to St. Thomas. Usura, Card.

Lugo, d. 25 sect. 3. Here notice proposition 42, condemned by Innocent. XI. quae dicebat: Usura non est, dum aliquid ultra sortem exigitur ex benevolentia et gratitudine debitum, sed solum si exigatur tamquam ex justitia debitum. It is correctly noted that proposition number 6 states that the damnation falls upon those words which say that a debt due out of

gratitude must be repaid, for it does not hold that one is bound to satisfy his obligation of gratitude towards the lender with his goods, since he can satisfy it by praising and praying for him. But then, can an obligation of compensation or gratitude ever be reduced to a contract? Absolutely negated, as clearly stated in the aforementioned proposition, for that which is deduced into a contract is already called a debt.

See what has been said about « 4. » It is not usury to lend on account of another's friendship to be sought after, nor to refuse service; because friendship is not valued by price, Card. Lugo l.c. » 5. However, a pact to obtain from the lender (or through his agency) some service is illicit; and usurious. Thus commonly in c. 3 n. 58 it is commonly held, *contra Navarr*.

It is excused by Salas de usura d. 9 n. 4 who makes a loan with a pact such that something be immediately given as a benefit out of gratitude. See 7 c. 19 disput. 7 * (Indeed, he is excused who lends with a pact so that the other may reciprocate presently: But otherwise, for the future.) See what is said about Thomas). 6. A pact, by which a lender is granted an ecclesiastical benefit, is usury (and simony), because it involves incurring a new burden. The pact, that a benefit be conferred to the usuary as a ecclesiastical loan, is usury (and simony), because it is understood to incur new debt.

It is not usury when one, unable to recover his goods, lends them out so that they may be returned to him or so that he may not unjustly suffer harm: because this ought already by right to be repaid, and thus he does not make a profit nor impose a new obligation. It is not usury to demand anything on account of the risk of recovery, difficulties, or expenses which will be, or are feared in the process of recovery, because the value can be estimated for which one exposes oneself to such a risk and difficulty. Con. d. 3 q. 3 p. 5. It is necessary, however, that this risk be expressly or tacitly deduced in the contract, teaches . 3 t. 4 c. 16 n. 9. ex Medin. Val Mol Et sic liciti sunt Montes Pietatis, ut vocant; hoc est thesauri quidam, qui in refugium pauperum à Republ. vel Principes relictique liberi sunt. III.

Treatise. V. Of the Seventh Commandment of the Decalogue. They say that for this reason it is gratuitously lent to the poor, but still so that they repay a little for expenses, and thus they are made stewards, and the conservation of such monies V. 5 c. 18. 2 c. 20 Bonac. l. c. p. 13. A great question is raised: whether it is permissible to demand something above one's due share on account of the risk of losing one's reward?

The first opinion denies this, and that view is held by Soto in his sixth

book, question 4, article 1, ad 1. Tol de Septimo libri tertii articuli quinti. Reg. 3. Genet. tr. 4 c. 7 q. 3. The reasons for this judgment we shall set forth below in the objections to the second judgment, which we follow.

Therefore, the second opinion is more probable and sufficiently common, which they hold as above, . 2 c. 20 n. 111. Sylvius in 2 2 q. 77 ar. 1 quaest. 4 Sylvester de Usura, Continuator Tourney t. 1 p. 499. Treatise on navigation. 9 Fagnan, in chapter On sailing, book 5, title concerning usury. Petrocoresis t. 2 p. 387. Cabbositus.

The. J. l. 6 c. 8 n. 2 Lugo D. 25 n. 77 et 79. et aliis innumeris, affirmant licite posse aliquid moderatum accipi propter periculum sortis: Dummodo 1. periculum sit verum et extraordinarium, non autem commune, amittendi sortem, vel eam non recuperandi sine magnis expensis, et laboribus, nempe si detur mutuum homini dubiae fidei, vel pauperi (intellige, si ipsi des mutuum, praeter id quod tu praecise tenebris ex praecepto illi mutuare, ad ejus praesentem inopiam sublevandam). Dummodo 2. non recuses assecurationem sortis, si tibi offeratur per pignus, aut fidejussionem, et non cogas mutuaturium ad tale periculum transigendum, ut recte notant . 39 et in fine. Moreover, you can justly demand from the borrower what another would have given him as security for the venture, even though the loan be subsequently fully repaid to you. Reason, because exposing you to such a risk is truly estimable in price. This is confirmed 1.

At the Council of Lateran, Session 10, under Pope Leo X, where any profit from a barren thing is condemned when derived from usury, even though it is included under the title of labor or expense or danger: When therefore (as stated by the Council) profit is sought to be made from a thing that does not bear fruit, without any labor, without any expense, and without any danger, 2. It is confirmed from the doctrine of D. (ap. Petrocor. l. c.) ubi S. Doctor sic ait: Res qua extrd periculum possidentur ejusdem specii, plus ostimantur, quàm ea- dem existentes in periculo; et ideò ad naturam rei con- vertitur recompensatio, qua propter periculum ostima- tur plus vel minus valere. 3. Confirmation is derived from the Declaration of the Sacred Congregation for Propagation of the Faith. Faith, which Cabassutius and Tournelyll report in their chapters to Bancel Sum.

Moral. v. Usury. The case was as follows: Among the Sinensians, it was enacted by law that they might receive 30 per cent on a hundred in loans, without regard to the emergent damage or lost profit; and since there was danger in recovering by lot due to the flight of debtors, or delay in settlement, or the necessity of returning with additional burden to the judges for repayment, it was sought whether this was permissible. The

Sacred Congregation responded, approving it with Innocent. X. (and this Declaration of the year 1645.

Rome having requested typescripts), the Sacred Congregation of Cardinals of Saint Rome deemed it. The Church, by reason of a loan, immediately and precisely has nothing to demand beyond the principal; But if indeed they receive something on account of a probable imminent danger, and of the same quality, observing due proportion between the danger and what is received, etc., Then the Pontiff imposed a universal precept upon all Missionaries under the threat of excommunication, that they observe everything of this Decree and make use of it. It does not hinder to say that it is not certain from this Declaration, as Henry and Saint Ignatius state in Tournai, l.c. For Thomas Aquinas in his Ethics, p. 4o, 2a, brings forward an authentic exemplar of this Declaration attested by an Apostolic Notary. Moreover, Henry opposes the aforementioned Declaration, saying that it is not approbative but merely tolerative; But it is replied that the Sacred Congregation says there, that those who borrow are not to be disturbed, provided there be a reason of probability; of danger, which words certainly signify not mere tolerance, but positive permission. Moreover, that the Pontiff, as we have said, has positively commanded the observance of this Decree; whence (as well says Tournely) it would have been unheard-of for this method of proceeding to be employed if the Pontiff had commanded the observance of the Decree, since he either held it to be usury or doubted whether it was such.

Therefore, Henry likewise opposes that this be valid in an exceptional case where the danger is far greater than the common danger. It will be replied that the Sacred Congregation responds concerning the dangers for which inquiry was made, namely flight, delay in response, and difficulty in demanding, which dangers are not extraordinary among external perils. Objection is raised I. When the thief restores what was taken away, he is not bound to restore the price of the risk: therefore much less is the borrower bound to restore the loan: for if the risk of losing one's property is not a title that restrains the thief from exceeding the owner's due, neither will there be a just title for the lender to demand; for as yet the contract does not provide a title. But it is answered: No one doubts that a lender can demand repayment beyond the stipulated amount if damage has been incurred; and yet, if the damage has not been included in the agreement, nothing can be demanded, because there is no agreement as we say in n. 769 v.

But there is doubt. Therefore, even emergent damage is not a title for receiving anything beyond the limit, but it is rightly a title for drawing an enforcement within the pact. Thus likewise, danger sine pacto non est

titulus percipiendi aliquid ultrà sortem, sed benè est titulus justè paciscendi, cùm mutuans in gratiam alterius in se suscipiat periculi onus, quod per se est pretio æstimabile. But the thief, because no pact intervened between himself and the Lord, therefore owes nothing in reason beyond the hazard to restore anything beyond the stipulated amount. Wherefore for the conclusion a certain rule holds, namely, that in order to lawfully demand something beyond the stipulated amount, it is required that there be an intervening just contract; and since the contract must be just, it is required that the lender take upon himself some extraordinary burden in himself.

Just as therefore he himself can justly agree to pay something exacted by damage emerging with certainty, so also, in like manner, he can demand something (even though less), on account of probable damage, as is the case with the danger of damage. Therefore rightly it is said in the II text of the chapter Naviganti de Usuris, where it is stated thus: He who lends a certain amount of money to one going or about to go to the market, because he takes upon himself a risk, thereby receiving something beyond the due, is reckoned as usurious. To this text, multiple responses are given. Respondent 1. Palaus, et Cabass. l. c. n. 3 ibi mendum irrepisse et omissam esse particulum non. He also states that this interpretation can be well understood from the context of the aforementioned Canon, where, since the discourse immediately thereafter deals with one who borrows grain or wine, which requires something to be taken into account due to doubt regarding a decrement for temporary restitution, it is subjoined: He too who gives ten solidi so as to receive at another time the same amount of grain, wine, etc., should not be regarded as a usurer from this.

Therefore, the same statement is considered applicable to the first case; for even this particular suffices to show it; Otherwise (says Tourney), the Pontiff ought rather to have added a particular in regard to that usurious contract, but if he had intended to declare that contract usurious. Response is given 3 with Fagnano in said c. Naviganti, and . As Fagnanus also says, if a Bishop receives a gratuitous gift from someone and subsequently confers a favor upon him gratuitously, he will be deemed simoniacal in external forum; but such will not be the case in conscience. Respondent 3 cum eodem Cabas. Item Lugo D. 25 n. 78 c. 3 n. 92 cum . et aliis communiter, textum intelhigi pro casu, quo mutuans vi ipsius mutui obligaret mutuatuarium ad talem contractum assecurandi ineundam; vel casu quo (ut sentit) mutuans intendat omnino ex mutuo lucrandi, ita ut aliter non mutuaret. Idque expressa sentit etiam D., ubi dicit: Quod si mutuans non sperat lucrum pro mu tuo, sed onus periculi quod suscipit petit sibi compensari id ut esset dispositus ad mutuandam gratis pecuniam, sic tale periculum in se non sumeret; certe tunc non peccat.

Now concerning the approved Montes Pietatis, as Busemb. mentioned above, it is to be noted that they were approved by the Lateran Council under Leo X with this limitation: "It grants merely an addition for the expenses of the ministers and other things pertaining to their preservation, up to their indemnity, but not beyond their lot, without profit to them." Hence P. Concina 1. 7 p. 58i n. 4 and Tourn. 1. 1 p. 521 observe that for such Montes Pietatis to be legitimately established, three conditions are required: I. That money may be delivered to the poor within a certain sum, for a time determined for its restoration. II. Ut tres conditiones requirantur. That a pledge be exhibited by debtors and that it be kept under the custody of ministers, and sold by auction at a pre-determined time, retaining the price due to Monti, the remainder shall be restored either to the Lord of the pledge or to the poor if they cannot be found; or even again to that same Monti, as Roncaglia states in question 3: What is also admitted by Concina p. 382 n. 5, if a Mons is poor and compelled by necessity to succor the needy, as some Monts have conceded Sixtus V and Clement X. Here however it is to be noted according to Concina loc. cit. n. 6 that the rich sin when they accept a loan from Monte merely in order to earn some profit elsewhere, and therefore are bound to return the money immediately.

I would understand this to say it, if the Monte were poor, because then the provision for the support of the poor would fail, for whose sake these Montes have been instituted. Pasqualigus autem apud Concina n. 7 affert quasdam Litteras Pauli III quibus asseritur licite concesse posse aliquam annuum accessionem iis qui pecuniam otiosam in praefatis Montibus collocant. But P. Ballerinus ibidem clearly and deservedly demonstrates these letters to be apocryphal. Pertinaciter tamen adducit P. Concina 1. 7 p. 483 n. 9 alias Litteras ejusdem Pauli III Julii III et Pii IV in quibus id conceditur, sed cum hisce limitationibus, ut deponentes pecuniam hoc faciant zelo charitatis erga pauperes, et alias paratas habeant emptiones ex quibus licite lucrari possent. Whether it is nevertheless permissible to establish such private Montes?

They affirm. 2 c. 20 n. 194. « 9. Usura non est, si timens difficultatem aut fraudem mutuatarii in reddendo tempore constiteris, paciscaris ut, si tunc non solvat, aliquid det praeter capitale loco poenae, quae licite exigenda est, dummodo alia intentione non fiat, quam ut mutuatarius sic quasi constringatur ne sua culpa fallat. Wherefore, if the borrower cannot repay without his own fault, it will not be permissible to exact punishment, as is stated in 32, who says that a manifest argument of an evil intention is evident if you wish not to be repaid at the specified time so that you may receive the penalty: and simply usury, if knowing for certain that another

will not be able to repay, you still burden him with such a penalty. V. Unde si mutuatarius absque sua culpa non possit solvere, non licebit poenam exigere, ut habet 32 qui ait, manifestum esse argumentum pravae intentionis, si optes non solvi tibi praefixo tempore, ut poenam recipias: ac simpliciter usuram fore, si certo sciens alterum non valiturum solvere, adhuc tali poena oneres. Bonac. d. 3 q. 3 p. 7. 317. 2 c. 20 d. 15.

It is therefore licit in a mutual pact of conventional penalty, as commonly held, according to Lugo D. 26 sect. 6. Sot. l. 6 q. 1 art. 3. d S. Ign. . 9 Ex 8 q. 3 ad 13. Cabal. The. Chapter 6, Article 7, Note 1.

Let it be known that according to l. 2 c. 20 n. 128 and c. 3 n. 75 with Scotus, 2, in order to avoid the intention of gain through a penalty properly imposed, which intention is presumed if the debtor were burdened temporarily to repay something that he is known not to be able to solve or discharge. Just as with Bus. Add 3 that the punishment be moderate, and proportional to the fault. V. . n. 76. Whether, however, the said punishment is due before the Judge's sentence?

They deny [this] because the general reason for penalties is that they should not be due before the sentence. However, they hold the opposite more probablistically: Continuator Tournely t. 1 p. 512 Holzrn. 2 c. 10 d. 14 in fine et Sylv. Villal. et alti, quia haec poena magis habet rationem pacti, quam rationem poenae. 10. Usury is neither to agree nor to receive anything rationetdanniemergentis (if indeed the cause be truly a loan), because of the cessation of gain or because it is about to cease, provided that the lender be warned beforehand: as if you wished to repair your house, or could now conveniently buy wheat at a good price; but by giving in loan and thereby depriving yourself of your own money, your house was ruined, and afterward you had to buy wheat more expensively.

Item non poteris lucrari cum tua pecunia, quod poteras et volebas negotiando, ita ut mutatio sit verè causa lucri cessantis. Where he notes. That you truly desired to negotiate with that money, and do not have another. That it is worse to gain ill-gotten profit through trading than thus to lend with the intention merely of receiving interest on the loan. That you may ask for less than you could have gained through commerce, and after deducting expenses, since the gain ceasing to be an act but being in potentiality, and subject to various such events: whence it is left to the discretion of a prudent man to estimate this according to his greater or lesser certainty, and thus to bargain with the lender concerning it.

S. d. 324. Sal. dub. 26. etc. Card. Lugduni d. 25. sectio 6. Hence, he who did not have the intention to engage in business, or if there were none,

hoped for no quick profit, or was not morally certain about the gain, can receive nothing by lot: because this loan truly was not a cause of ceasing profit.

The same is true for usury if merchants selling on credit receive something beyond a strict price due to the title of profit ceasing, that is to say, they sell a thing worth only 100 for 105. After the year: because by selling on credit (which is a virtual loan) there are more buyers, and more things are sold, and thus the cessation of profit is compensated, and therefore that does not cease in reason on account of this sale, trans. 24 d. 9, see dub. seq. Read Europe on this matter. » 41. among those proscribed by Innoc. XI.

It is certain on the title of Danni emergentis licitum esse mutuanti exigere id, quod sua interest, causâ mu-tui. Thus all agree with D. Thom. 2. 2 quæst. 78 art. 2 ad 1 who gives the reason, saying: For this is not selling the use of money, but avoiding damage. But that is permissible on account of the title of ceasing profit? Sotus doubts 1.6 q. 1 art. 3, and absolutely denies this Scotus, Durandus, and others according to Azorium; and it seems that the same has adhered to St. Thomas in his commentary where he subjoined: However, compensation for damage considered in this way, namely, that no profit is made from money, cannot be brought into a contract, because one should not sell what one does not yet possess, and which can be impeded by possession in many ways. But commonly other Doctors affirm this, as Cajetan in 2, 2 quaest., 62, art. 4.

Sylvius 2. 2 q. 77 art. 1 q. 5. . 2 c. 26 d. 10. Gennetus tom. 1 p. 233 q. 1. Petroc. tom. 2. p. 399 q. 12. Wigandt tr. 9 Continuator Tournely t. 1 p. 501. Anacl. qu. 4 n. 36. . 14 c. 3 n. 79 cum P. . etc. Hunc titulum approbat 1. 13 ff. et expressè videtur approbasse SS. noster Pontifex Benedict.

XIV. In epistulae finibus dicit: Nec etiam negatur posse multoties pecuniam a unoquoque suam per alios diversae prorsus naturae à natura mutuorum rectè collocari et impendi, sive ad proventus sibi annuos quaerendos, sive etiam (nota) ad licitam mercaturam et negotiationem exercendam, honestaque inde lucra percipienda. The reason for our opinion is that, as the same St. Thomas teaches in II-II, q. 62, art. 4, a person can be damaged in two ways: one way by taking from him what he actually possessed; the other way by hindering him so that he does not acquire what was within his reach to obtain; and such damage should not be compensated equitably, because it is less to have something virtually than to have it actually. That is what the Sacred Doctor says in the Response to Question 2, and it holds true even for profit that one hopes to gain from his own money, verbatim according to St. Thomas: For he who sows seed in the

field has not yet the harvest actually in hand, but only in potentiality; similarly he who possesses money does not yet have actual profit, but only in potentiality; and both can be impeded multiple times. It does not prejudice the matter that the Saintly Doctor understands it thus (as stated in objection 2), namely regarding the cessation of profit due to the delay in repayment of a loan not being paid within the specified time; whether the profit ceases due to the delay in repayment of the loan or for any other reason of the loan, the same reasoning applies to demanding the cessation of profit, since such an interest does not owe to the lender except for compensation of damage, which equally befalls him in either case. According to the text of St. Thomas, first mentioned, Sylvius in the same place denies the Doctor there, that the borrower can demand the full profit acquired, not merely a part thereof; and justly so responds, since the Doctor himself teaches in the second place, above cited: a thief must compensate for damage, but not according to equity; adducing the reason that it is less to have something only in potentiality than to have it actually.

If therefore a thief is held to compensate the Lord for the profit lost through theft according to mere conjectural estimation; why, according to the same estimation, cannot the lender demand the profit lost through the loan? This is most confirmed by the Bull of Benedict XIV; see at the end of Volume II under n. III, where it is stated that it is just to demand something from a loan if there concur just titles, namely, if the money would otherwise have been placed in a legitimate negotiation. For such cases three conditions are required: I. Conditione ut interest ab initio in pactum deducatur; nam post contractum mutuans nihil petere potest, etsi immemor fuerit de sui damni: nisi vi, metu, vel fraude coactus sit a mutuatario, ut S. Th. d. q. 78 art. 4 et ad 2i Lass. n. 79 et alii; vel nisi involuntarie coactus sit ad mutuandum, quamvis licite, v. gr. a rege ad bonum publicum. Likewise is the borrower bound to damages and loss of profit, if justly called upon for payment; or the prefixed term will lapse, and himself culpably will not discharge it, S. Th. d. 1. ad 1 et Sed: here doubt arises: whether in a contract it be necessary to anticipate the borrower regarding true damage or some other just title whereby something may be demanded beyond the stipulated amount? The first opinion denies what Lugo D. 25 n. 74 and 182 hold with Tap. c. 3 n. 83.

Reason, because a mutuarius cannot reasonably allege his intention to an unjust title, but ought to contract according to the capacity of the thing, and consent to a just title. Primarily because regularly borrowed money is not repelled from the contract on account of its knowing the just title to demand profit. Nevertheless, the more accurate opinion (although formerly opposed), teaches that a warning is necessary; as Busenb. supra,

P. Concina tom. 7 p. 406 n. 4 et p. 465. Continuator Tournely tom. 1 p. 505 v. Fourthly, c. cum; for thinking that the title is unjust, he perhaps contracts a loan hoping that it will not be repaid to him or that it will be repaid to him with compensation, or at least that another time he will restore what was borrowed; otherwise, as Concina well says, it might happen that from the loan he reaped more harm than benefit.

But the more universal reason is that for contracting a debt, interpretative will alone is insufficient; rather conditional will is required, as we say in note 773. For actual or virtual will, or at least one that has been entertained at some time, and not one that has been revoked, is required, according to the dicta of book 6 on Sacraments. Therefore, if the profit ceases to accrue to the borrower, he should impute it to his own negligence; for thus says St. Thomas: neither does he who receives the loan incur damage from the foolishness of the lender. On the other hand, it would have to be said thus: if there were really a just title, both those who borrow and those who lend would consent to enter into the contract in the best way possible that they could, as we shall say shortly in the inquiry. IV. n. 773. II.

The condition is that no more be demanded than the profit which is expected from another lawful contract, according to the estimation of hope and risk, and after deducting expenses. V. Conditio est, ut non plus exigatur quam sit lucrum quod speratur ex alio contractu licito juxta aestimationem spei et periculi et deductis expense. Namque autem debet deducta esse estimatio laboris in illo lucro impendendo? They affirm that it is suitable for habilitation; but it is more probable to deny it according to Lib. III.

Treatise. V. They consider the Seventh Commandment of the Decalogue, namely number 84 with Bonaventure, III. It is a condition that the loan truly be the cause of damage or of ceased profit; for if the lender has another sum of money than that which he substituted for negotiation; or if the profit which he loses by reason of the loan in making a purchase can be and wants to be compensated to himself by some other way or artifice, by means of which he could not have dispensed in trade; then he cannot demand anything, unless it would be endured as greater trouble in that other way of earning. See.

Moreover, a lender may lawfully demand interest arising from damage incurred or from the cessation of profit, if he has not lent out of another's entreaty, but himself offers to lend? Conradus and some others deny this in . 2 c. 2 n. 101. Because, when the lender, not having been pressed, but offering spontaneously, impedes profit to himself by lending, the cause of

the loan, or of being lent, does not cease to be profit. But they more probabily affirm the same in . 25 n. 107 with Mol.: As much as if anyone offers to another to omit the cast of the net, he justly demands a price for the hope of that catch, because the other is the true cause why the hoped-for capture should be impeded from him. But here several questions are to be elucidated.

Question I. Is it permissible for a borrower to agree from the outset on a certain sum of money to be repaid when either the damage incurred or the lost profit is uncertain, or is it merely probable that such damage or loss will occur? P. Concilium distinguishes in its treatise to. 7 p. 408 n. 5 and p. 438 q. 4, and says that if the damage of events or the loss of profit is certain, namely because opportunities for gain are actually or nearly present, and only the greater or lesser amount thereof is in doubt, then it can rightly be estimated by prudent arbiters; and a quantity to be paid can be drawn into the agreement. On the other hand, if the damage is not certainly to occur, or if the opportunities for profit are only probably to arise. Reason, because in these cases it could happen that the damage did not occur, or the opportunities did not arise, and then the mutuator would gain profit solely from the mutual exchange.

But they rather think with Malder. Dec. l. 8 tr. 3 c. 8 §. 3 n. 4 et 14. cum . et 1 p. 506 v. You will inquire whether it is licit to engage in a contract to sell a certain quantity at a price that has been mutually agreed upon, observing due proportion according to fear of damage or hope of future profit. Reason, because due equality is now well preserved; for just as, without a loss occurring, one would gain by lending, so too, in return, if a loss does occur, one will gain more by borrowing. It matters not that the damage expected later does not occur: for the contract with the agent is made not on account of a future loss which may happen, but on account of a probable risk assumed actually, and which is estimable in price: just as if someone sells a cast net, he does not sell the fish which perhaps will not be caught, but the probable hope of them, which already exists factually.

Objection L is presented. Howbeit, §. Likewise Labeo, ff. To the objection. Aquinas states in that place where it is established that if anyone breaks the nets, he is not bound to release them to God for the hope of catching fish, but only for the damage done to the nets. But it is responded to according to the Gloss (by the word Fieri) that then the Lord precisely will have no action from the Law of Aquilius for an obstructed hope of catching fish; but he has a different action elsewhere from the law.

If cast 13. ff. from where it is thus said: If I have bought a cast net and the fisherman refused to cast the net, this net must be appraised with

uncertainty. The Glossa subordinates: It is to be estimated as probable what would have been captured. And it is evident that damage which is probable can licitely be compensated by way of a mutual agreement, although uncertain. By the same reasoning he says probably, Bonaventure. D. 3 p. 4 n. 13. The borrower who was not certainly but only probabilistically destined to use the money for negotiation, can demand something in proportion to the probability.

But you may say: if something can be demanded in proportion to the probability of the application of the money, therefore something could also be demanded in proportion to the possibility of applying it. I respond by denying equality; possibility is mere potentiality, but not an obstacle to application: whence the mutuator has no actual and positive foundation for future profit from it, but only a negative one. On the contrary, probability of future gain has indeed a positive foundation for such profit or hope of this kind, and therefore it is estimable in price. What if the modifier depends solely on the mind, whether or not to engage in the transaction? They still affirm: 9 tr. 1 c. 3 §. 4 n. 3 and Lugo D. 20 n. 2 with Salas, that one can possibly exact something, because it is estimable in price; by this power of deliberating and assigning money to the negotiation, he deprives himself for the grace of the loan, even though he is not bound gratuitously by such a will and power to be deprived: Just as if someone were to remain uncertain whether tomorrow he wishes to go fishing or not, it can well be that he exacts something, if in the grace of abstaining from fishing he binds himself.

And this does not seem improbable, since this obligatory deprivation, inasmuch as the lender is bound not to repeat the loan for some period of time, is estimable at some price. Even though at the beginning it was permissible to infer in the contract a damage that would occur, or a profit that would cease to be uncertain, nevertheless it will never be permissible from the outset to demand such interest through contract, as commonly taught by Lugo D 25. n. 106 Azor 3 p. 1. 5 q. 3. Concise it to the seventh page, forty-sixth paragraph, eighth note. Reason, because if you lend a hundred and receive ten for a profit that ceases to be, it is no longer a loan of a hundred but ninety; and to impose such a burden on the borrower from the contract before the time by means of the convenience of the lent money is usury. It is conceded nevertheless by Az. at the same place and line that it can be demanded from the beginning a profit in some other form: But this too is rightly condemned: for Conc at the same place and line says that to deprive the lender of his money at an opportune time is also a burden, and thus it is usury.

Question II. Whether it is possible to demand a profit that has ceased on

money destined for commerce, if you have another sum of money not destined for such use, which nevertheless could be substituted for the transaction? And indeed, if you had reserved that other sum of money for the use of your family—namely, for the maintenance of those in need, providing dowries for daughters, alleviating old age, or so as not to expose your own condition to danger—you lawfully exact a compensatory profit, because you are not bound to neglect your prudence in providing for yourself. Thus Less, l. 2, c. 20, n. 87, cum l.c., p. 4, n. 15, n. 7, 9 tr. i e. 3 §. 4, n. 2, et Lugo, Croix, l. 3, p. 2, n. 86, item Valent., (et merito probabile putant.), affirm that given that you have determined to expose that certain sum of money to negotiation and risk, you lawfully may demand the loss of profit, because it is a true loan for which the cause exists why your expected profit should cease from that money; nor are you bound in grace not to expose the money lent, which was not destined for negotiation and risk. This, however, I would not admit, unless, while you lend the loan, you truly have an intention that that reserved money not be substituted for negotiation.

Question III. Whether, if you do not intend to absolutely reserve that money for business, but conditionally, as when you say: 'I would like to engage in business unless many people request a loan,' then you may demand interest? Chapter 2, paragraph 20, note 90 says it is probable that you can, for although the multitude of those accepting loans is not in itself the cause of any lending, yet all together are the cause of the cessation of profit; however, it is true that you, so that these people may borrow, have already factually deprived yourself of profit, and from another side the borrower is deprived here. III. Treatise. V, On the Seventh Commandment of the Decalogue: They do not think that an injury is done to them.

And the same is felt 3 hr. 4 c. 16 n. 8 . 9 c. 3 §. 4 n. 4: this usury is committed because he effectively desires to gain profit from much, and ineffectively from negotiation. It may be replied: this man, although he has an inefficacious will to negotiate, still desires efficaciously justly to gain profit; and because he can already justly gain profit from negotiation, therefore he justly gains profit from a loan, since for him the loan is a true and efficacious cause, so that the profit from negotiation may cease to be his. However, Less rightly notes, n. 95: It is not easily admitted for fear of palliating usury; For (as Bus. notes here: he should lend only so much as will suffice for the grace of lending), Question IV, 773. Whether, if someone in good faith contracts an usurious loan and demands profit; after this becomes known subsequently, can he retain that, if he could truly have contracted it justly by some title, namely on account of danger, profit ceasing, etc.? The first opinion affirms this, because whoever contracts in good faith always intends to contract in a manner that is licit according to

what he can do. Therefore he contracted it in this manner, because he thought it to be lawful; wherefore virtually he intends to contract in any lawful manner by which the contract could be rendered honorable.

Ita Lugo disp. 25 sect. 9 et Sa, c. 3 n. 38. et c. 8 §. 3 n. 21. The second, however, more correct opinion, which those maintain, c. 20 n. 104 Concilii 10. 7 p. 465. 1 p. 515., denies that it is possible to retain the profit obtained through a changed cause as legitimate. Reason, because it cannot be said that there was any voluntary or implicit will, since it did not think of any other contract than that of a usurer. In that case only would there have been an interpretative will, which is insufficient for contracting, as we said above in note 769. v. But.

It does not hinder to say that this changer may retain the profit, as a possessor in good faith, who is bound only by what he was accused of; nor can it be said that he has been dissolved, whose reason for the loan having ceased, could justly have received the profit. For it is replied that something beyond the due must absolutely be required in order to justly demand repayment on a loan, so that the loan may be made from justice itself, as we said above at the same place, chapter 769, verse v. But. Or at least, so that both as mutuator and as mutuaturius they may either expressly or implicitly consent to the just title, albeit explicitly intending to contract in every better manner possible: this contrariety sufficiently supplies what could lawfully be exacted from that just title, even though it was not expressed; as they say. Cross l. 3 p. 2 n. 924. et c. ac probabile putat Caeterum SS. noster Pontifex Bened.

XIV. in sua Bulla de Usuris (vide ad calcem. Epist. (In the Encyclical) where after having said n. III. By these means, however, it is most unjustly denied that at any time and with a mutual contract certain other titles (as they say) might possibly coincide with those very same ones of natural mutuality, from which something altogether just might arise above the measure of what can properly be demanded by way of mutual obligation. Then, in order to signify what kinds of titles are justly exigible from a loan, he immediately adds: Nor is it also denied that money may be rightly placed and demanded by diverse utterly different contracts from any one, whether for acquiring annual revenues for oneself, or for exercising legitimate trade, or for obtaining honest gains.

Finally n. V. declares it false that just titles or contracts should always and everywhere be promptly fulfilled; hence he warns: Let each one first inquire truly whether a just title from a contract other than mutuum, or a just contract from mutuum itself, will occur, by whose benefit all loss of gain shall be exempted and rendered immune. Then wisely he instructs

thus: He who desires to be immune and intact from all taint of usury... should be admonished that they declare the contract to be instituted beforehand, and explain the conditions to be inserted, and specify what profit they desire from the same money afterward. And this must be diligently observed, concerning which the Pontifical Bull admonishes Confessors: Abstain far from the extremes; and indeed 70 Lib. III. Treatise.

V. Of the Seventh Commandment of the Decalogue, they judge with such severity those matters that they accuse any benefit derived from money. But some have gone so far in indulgences that they consider anything as profit freed from the turpitude of usury. Let them not adhere too much to their private opinions, but before they give a response, let them examine more writers who are more commonly praised among others. Then receive those parts which are thoroughly confirmed both by reason and authority.

That is to say, if a dispute arises, and some contrary opinion is brought forward for examination, no contempt at all is understood towards those who follow the opposite; nor have they asserted that such should be marked with severe censure, especially if it lacks neither reason nor testimonies from eminent men. That they might advert to this, I desire those who are not hesitant about giving non-insulting notes on many occasions of frequent offenses against the writers, to do so precisely because their opinions contradict those writers. Question 774, Fifth Quæstion. What kind of agreements can lawfully be established mutually? Before all things, attention must be given to that general rule handed down by tradition. S. Thoma 2-2 q. 78 art. 2. quod omne onus pretio aestimabile impositum in mutuo, tamquam debitum ex justitia, vera sit usura.

Secondly, if something is demanded which cannot be measured in money, such as benevolence, friendship, and similar things: thus the Holy Doctor. It is certain, even that it is not usury to demand in a loan something else than what justice already demands; Hence it is licit in a loan to demand that the other cease from private vengeance, from unjust harassment, etc., according to what was said by Ità Less, lib. 2, cap. 20, n. 57, etc. 775. But there is doubt whether in a loan a commissory pledge can be imposed, namely that, upon failure to repay within a certain time, the pledge be acquired by the lender? Commonly do the Doctors deny it, 47. Unless the pledge is worth more than the lot, or unless it is a pact (certainly licit) that if at such time there be no solution, the pledge may be sold, and from the price the lender retain only his own lot. Whether, however, the contract is valid such that if the loan is not fulfilled, the pledge should be lost as a penalty, even though it may be worth more?

They deny Vasq. Paleo, et Covaruv. But it is probably affirmed according to Bonac. 48., based on what was stated in n. 766, where the legitimacy of conventional punishment has already been proven. It must be noted that, if the mutuator receive in lieu of pledge a fruitful thing according to 776, he is bound to place its fruit in sortition; and thus the contract by which the creditor can use the pledge and enjoy its fruits until the debt is paid, commonly called the Antichriseos (generally known as the Contract to God), is generally rejected from itself, with another title, as a usurer: It is certain against Saint Dionysius; because, since the thing remains still in the domain of the mutuator, only he alone fructifies, according to chapter 1 and 2 on Usury. But he is bound to render the fruits which through his own negligence he has failed to collect.

However, it is excused to accept the pledge given as promised dowry, whose fruits are not reckoned in the dowry for sustaining the burdens of Matrimony, as Salubriter, de Usuris, says: The son-in-law's possession of the fruits of the pledged property, which was obligated as a dowry from the father-in-law, is not to be reckoned in the sortes. And this is the reasoning: even if the fruits of the pledge exceed the burdens of the marriage when the pledge is granted absolutely and at the time when the dowry is constituted. Otherwise, if it is given merely as security for the dowry, or when the dowry has already been constituted; likewise, if the son-in-law does not bear the burden of the marriage. V. Tamen sic, si datur tantùm in dotis securitatem, aut dote jam constituità; sic item, si gener onera Matrimonii non sustineat. There is doubt whether it can be stipulated in a contract that what is owed to the borrower, which he owes not out of justice but out of charity or religion—namely, when a physician treats if no one else is present: when an advocate defends: when a rich person assists in great necessity; likewise, when someone who has vowed alms gives them: when one hears a prescribed Mass, etc.? Azorius 3 p. 1. 5 c. 7 q. 15.

Good. D. 3 q. 3 n. 7. item cov. SALAS., 3 n. 55. deny that this can happen without stain, 72 Lib. III. Trace.

V. Of the Seventh Commandment of the Decalogue concerning usury, because a pact adds a burden of justice which was not previously present; and this is held by 42 Innoc. XI. n. 15 dicens: omne pactum, novum onus imponens mutuarii, usurarium esse. They nevertheless contradict. Lugo, d. 25 sect. 5 n. 49. 2 c. 20 d. 8 Concina tom. 7 p. 468 n. 2. loc. cum Valent. tanto magis ab injuria inferenda Deo.

Nevertheless, against this second opinion, in peace with so many Doctors, I have never been willing to acquiesce, because every burden imposed upon

the usuary by the contract is bound himself to fulfill according to justice; and thus it has escaped estimation at a valuable price; so that if after such a contract the Physician does not heal, nor the Advocate defend, they will nevertheless be held by justice to compensate the damage which would result from the omission of healing or advocacy, for which damage prior obligation was certainly not. Therefore, it makes no difference whether the imposed pact yields or does not yield, in the interest of the borrower, that here the essence of usury consists in demanding from the loan a valuable price as compensation? And wonder why (as we said in n. 59), as if certain they had asserted; here however maintain that it is not usury to impose a similar obligation; since by common axiom it is said: What in spiritual matters is simony, in temporal matters is usury. Moreover, all rightly teach that usury cannot be inferred from a pact to sell what was already due by justice, or from removing unjust vexations; because then nothing would be demanded for an estimable price, or from which the mutuarius could have earned a profit; thus Concina p. 468 n. 1 Tournely tom. 1 p. 509. and others. There is doubt, however, whether it can be deduced in a pact such that the mutuarius might make an injury of condonation, to which he was not bound by charity but could justly seek satisfaction? They affirm that Soto, in the third part, eighth question, thirty-fifth section, article three十八

Because a true obligation was added by something estimable in price. However Lessius in lib. 2 cap. 20 d. 7 et seq., cum dicit: Sed bene advertunt, hoc palliate usurae periculo non carere.. Dubitatur an liceat pactum, ut muluanti officium conferatur? Others say that, if this be sought from justice, it would indeed be usury, and is common with S. Th. 2. 2 q 78 a. 2 ad 3 et alii contra paucos ap. . But I absolutely never say that it should be admitted from proposition 42. Innoc. XI. ut supra allata, ubi ab usura excusabatur aliquid ultra sortem exigi, tamquam ex gratitudine debitum.

Hence, receiving this office in such a manner, one would be bound to resign it according to justice, or to count the reward of the office as part of the stipulated sum, unless it is presumed that he does not wish for a usurious loan; since otherwise the agreement is already considered valid. See. 1 c. 20 n. 62 Lugo n. 42. It is doubted whether it is permissible to obligate a mutuarius to those things which he was bound to provide out of gratitude, for example, that he may buy himself necessities from the lender, lodge his house there, cultivate an estate with just remuneration, etc.? Entirely denied, since as we said: And in this seems clearly expressed the opinion of S. Th. 2. 2 q. 74 Lib. III. Treatise.

V. Concerning the Seventh Commandment of the Decalogue, 78a, 2 ad 3,

where it says: If a gift is given from obedience or from speech not as if out of obligation, but out of benevolence which does not fall under the estimation of money, even though this can be received, demanded, and expected. This doctrine, however, is discussed speculatively speaking; but in practice, correctly stated, it is said that what he says in 3 tractatus 4 caput 16 nota 3, namely that it is licit to obligate a mutuarius to do these things if the obligation is imposed not as a burden but as a condition sine qua non without which the loan would not be given, because once the condition is accepted, the burden itself is already imposed and the mutuarius is obligated to do that: this can never be licit ex ; see note seq. 78i. If, however, the pact is for remutuandi, then as S. Th. 2-2 q. 78 art. 2 ad 4 teaches thus; it is licit for one who lends to receive something in return at once, but not to obligate him to give a future loan. Therefore, it is licit for a lender to obligate himself at the same time to remutuate, because you can demand from another the office of friendship which he asks of you; provided that this not be more burdensome to him: and thus you could also demand that at the same time he give you a house to live in, sell you grain, etc. But otherwise, if you obligate him in the future; as S. Th. 2. c. 20 n. 53 et seq. n. 63 excuse usurious pacta for remutuandi in the future, but rather improbably. Doubtful is it whether a contract is licit by which the thing lent is to be returned in the same species and quantity when more valuable credit is given. In hoc certum est quod liceat, si æque dubium sit, an valorem rei sit augendus vel minuendus: Vide 2 c. 20 n. 145.

It is certain that, if you were to preserve the thing until the time when you would certainly believe its value to be increased, you may demand that it be returned either in the same quantity or with its increment, deducting however the estimation of danger or expenses incurred in preserving it. Habert, however, in part 4, page 242, at the end; Concina, in part 7, page 471, note 11, and similarly elsewhere, it is certain that it is permissible to lend old grain so that new grain may be returned, which is not considered more valuable or better than the old. Thus, with regard to number 11. The question therefore is, whether it be possible to request that a thing be returned to you in the same quantity at that time when you believe it will be worth more, even though you will not be preserving that thing? Affirming Sot and Mol., according to c. 20 n. 154: And this adheres Bus infra n. 18, because, as they say, this is the nature of a loan, that the thing be returned in the same quantity at the time when it is believed that it will be worth more.

But it is taught: Given that you would not have been certain to preserve the thing; for otherwise correctly it is said . . 70 when Bonaventure approves the aforementioned judgment, if the condition of the pact is

attended to only with a precise consideration of the substance of the thing and its value and increment. But I do not see how this precision can licitly be made, when the thing is not to be kept until the time of repayment; and certainly, or more probably considered as such; for the price of the thing itself always pertains necessarily to its substance. But I think it certain conversely: yet these doubts nevertheless have their place when a thing is considered and credited as more valuable. If, however, there be no estimation held in good faith of an increase or decrease of the thing; then you may well agree that the thing shall be returned to you in the same quantity. Therefore, Conc. loc. cit. et n. 72.

This, however, is not said of a loan of money, as Sal. n. 73 holds with St. Thomas, Pal. . . . n. 76 Lib. III. Treatise. V. In the Seventh Commandment of Decalogue 72 at the end, with Bus. infra n. 17 they add: to give good and valid money back in the same species and monetary number, when no thought or intention of increment is given, and thus be expressed the agreement: And this opinion seems more probable to me, at least if there is a common danger of increment or decrement, as P. Concina understands it, tom. 7 p. 473 n. 14.

A pactum reddendi pecuniam in alia specie quam traditur omnino usurarium est, quia imponitur onus pretio aestimabile ut dicunt c. et alii communiter. Up to now concerning contracts; as Anacl. observes well in his treatise on the Seventh Commandment, let us proceed to other questions which remain. Question VI: Whether the usurer acquires dominion over usurious profit? They affirm Lugo, D. 25, n. 206, and Scot. Yes, c. 3 n. 106, because although it is lent coercively, and therefore the usurer is bound to restitution, it is nevertheless given freely and transfers dominion, just as he who sells a thing out of fear transfers dominion. But the opposite must be held with S. Thom. 2. 2 q. 78 ar. 3 and commonly with 7 p. 534 n. 4.

Tourn. tom. 1 p. 514. And the reason is because a usurious contract is null by all law; mere delivery of a thing does not transfer dominion, as is found in L. Never have the laws on acquiring dominion over things. 784 Regarding the fruits acquired through usurious gains accepted, it teaches the same. S. Thom. quod, si percepti sint ex re usu consumptibili, tunc restitui non debeant, quia sunt fructus industrie; secus, si percepti sint ex re non usu consumptibili, puta ex domo, agro, quid (verba D. Thomae) sunt fruuntus rerum, quarum alius est dominus, et ideo ei debentur. And this holds true, even if the usurer does not receive the usufructuous fruits, provided that the lord himself would have received them otherwise.

What about the fruits which the lord would not have perceived but which

the usurer has perceived? Lugo, in the 25th session, book 11, note 209, says that they should not be restored, because according to his opinion the usurer acquires dominion over the usury, and only is bound to indemnify the lender. But we hold otherwise in our judgment, as we have already explained above, according to c. and Question VII: whether giving counsel for usury, by lending money to the usurer, to lend out, is bound to restoration? They deny Lugo D. 25 n. 217 and Sa, c. 3 n. 115, because these are not the cause of effective damage: for the debtor might later deny the solution of the usury. But with respect to this reason, it is much more probable (at least, I say that it suggests usury) Bus. affirms here with c. 2, c. 20, n. 178.

Lugo D. 25 n. 116. cum etc., quia vere ipse tunc est causa injusti contraclus; et licet debitor possit non solvere, si tamen solvat ex causa sua, injustè solvet. It is commonly stated there that he would not sin nor be held to restitution who should make such a loan for interest; and hence the first judgment is sufficiently probable on another ground, because reasonably in those cases it is presumed that the lender consents, as Lugo says, l.c. As for him who lends money to the usurer, Concina, tom. 7, p. 534, n. 7, n. 178 and c., with Bonaventure add, because he closely cooperates in the harm to the lender. But Lugo ibid. n. 116 rightly receives it on the same account, unless he provide money in gratia mutuatarii. Or rather, I add, unless he who is giving the money cannot himself deny it without causing damage to the superior order, as would be the damage to the mutuatarius according to what was said in n. 571 v. Second.

Question VIII. Whether it sins and is bound to restore money deposited with a person whom he knows will use it for usury? He responds: two parts, twenty. D. 21 and Lug. Bonac et utique contrà charitatem, si usurarius non haberet alias, unde usuras exerceret: Sed non tenere- retur ad restitutionem, quia in hoc injuriam non irrogaret mutuatariis. However, it is felt to be bound.

P. Concina 78 Lib. III. Treatise. V. If anyone were to commit his money to a usurer who does not have any other means from which to engage in usury, or if he were to do so with this intention, so that thereby more abundant profits might be made through usury, it would provide occasion for sin: and thus himself would become an accomplice in the fault.

Wherefore if such a deposer should be a participant in guilt, he would not be a participant in another guilt than that of injustice, which is committed by the mutuator. Nevertheless, it seems more accurate to me to say that the deposer does not incur a deprivation: for his action is not injurious but rather gracious to the mutuator, since he has greater readiness to give than

to endure the deposition of money, so as to provide for himself in necessity. Therefore, having posited that the mutuarius is not unwilling in this, the deponens, although he be a participant in injustice so far as he injures the virtue of justice generally according to the judgment which we maintained in the Third Part, where we said that he provides an occasion for sinning by injuring both charity and the virtue which induces one to injure one's neighbor; yet he is not bound to restitution, because he does not injure justice specifically, namely the particular right of another, nor does he inflict injury upon him, since with respect to the deponens he is not unwilling. And thus it can be understood that S. Thom. 787, Question IX., whether Princes, Judges, and Advocates, who are the cause for the solvency of usury, are bound to restitution? It is responded that they are bound: just as those who do not exclude usurers from their places are bound, so too they are excommunicated ipso facto in Clement.

By reason of the gravity of usury; unless indeed for the sake of the public good this were permitted to be expedient. Thus c. 3 num. 117 cum 788 Quæstio X., whether if he who is your debtor and a usurer, you can lawfully exact usury which he assigns to you from the borrower? He denies: and if you exact them, you are bound to restitution; provided always that it be established that that debt is for usury, n. 118 789 Quæstio XI. whether servants cooperating with usurers incur guilt? It is certain that domestics less than principals, who merely write down sums of money, enumerate them, bring forward pledges, and do similar things, are not bound to restitution nor do they sin. Thus n. 118.

Cross l. 2. n. 368. 5. c. 1. §. 4. n. 49. Et dubium est de his, qui exigant usuras et ad solutionem cogant; an tenentur ad restitutionem? Sa, ibidem licet dicant eos peccare, tamen excusant à restitutione, quia isti non sunt vere causa exactionis, vel tantum sunt materialis et remotae; cum . Med. . think them bound, although truly they are nearly cooperating in an unjust matter: And this seems more probable when it is said that if they themselves cooperate with debtors in an ungrateful affair, as if they were compelling them to a solution or subscribing apodixas: Otherwise, if not in an ungrateful affair, namely, if they merely exhorted them simply to a solution, or demanded usury without compulsion; because in this case debtors are not considered unwilling. But I would not excuse the creditor on account of the rationale of cooperation in sin alone as a servant. Question XII. Whether heirs of a Usurer or of another borrower are bound to restoration in full?

It must be distinguished: Si debts are hypothecary by contract, it is a common opinion that all are held responsible in solidum. The doubt is, whether if the debts be personal due from the deceased by way of delict

they are to be held liable in solidum? The canonists still hold that they are held in solidum, as stated on page 518, and they argue this point from c. Tua nos. 9 de Usur, where it is said: The sons are bound by distribution to repay usurious debts. But Tournely sufficiently argues in loco citato, with Habert, Pontas, Sambov., etc., that these heirs are to be held only for the debt, unless they have cooperated in the offense of the deceased: And this is proven from l. 1 C. de Delictis defunct. l. 4 tit. 17 where it is said: After the contestation of the lawsuit: because he (or she) did harm (or damage) to the deceased, his successors are liable in solidum; otherwise, as regards them, it is absolutely consonant with law. Cajeta gives the reason in responding to the text Tua nos, supra oppositum, 80 Lib.

III. Treatise. V. On the Seventh Commandment: Decalogue and it says: "Children are bound just as much as the Father is personally by the obligation of their goods; but in this there is a difference, for the Father is that entire person, and thereby has the whole obligation; yet each heir (namely co-heir) is only a part of that person, and consequently bears only a part of the obligation." Question XIII. This too would pertain to inquiring whether it is permissible to borrow money from a usurer and to offer him those things in return?

But enough has been said above concerning Charity, in Book II, note 47. Second; and n. 77. " 11. To borrow grain with an old obligation, so that new may be returned, is usury, especially at a certain time, if he who lends knows the new to be better and of greater value, Sylvest. d. 15 n. 11. « 12. Usury according to common opinion is such that if you lend something with the intention that it might later be obligated to you again by civil debt to mutually obligate you once more to lend or sell, or for one to come and purchase goods in your shop at your office, or to place his works there: because such an obligation is a thing estimable by price, since it deprives the lender of the power to otherwise procure elsewhere and place his works. Card.

Lugo dated 25, note 46, volume 3, part 4: chapter 16, note 3. Bon. l. c. p. 3. " 13. Usury is to lend on condition that, while it remains unpaid, you be free from taxes or just debts payable, according to Salas, C. Lugo n. 64 ex communi. Also, to lend in such a manner that the borrower of the money lent shall demand usurious interest therefrom, which he will not easily extort. What I add is that, if it spontaneously takes on that burden because it can easily obtain it, it will not be usury: ibid., and Bon. l. c. 15. Item, si frumentum, quod alibi habes, des mutuum, obligando, ut tibi reddatur hic vel alibi (cum majoribus sumptibus vel laboribus) plus valet, ibid.

16. Usura etiam est, obligare mutuaturium, ut partem mutui accipiat in

mercibus, quibus non indiget, ibid. » 17. In mutuo pecuniario, nisi aliter conventum sit, si quis det mutuo, v.g. 100 florenos, non potest exigere plus quam eorum pretium et valor tunc fuerit. Wherefore, if their value should then be increased, he cannot demand back 100 [florenos] because he would receive something above his due.

Because if the value decreases, the borrower must return more than 100 because otherwise he would not restore to equality. See. 2. c. 20. n. 149. 3. l. 4. c. 16. Bon. l. c. p. 3. * (Vide n. 782. vers. These doubtful.) * » 18. However, in mutual exchange of other things, such as wine, wheat, etc., matters stand otherwise; because if someone, for example, lends another 10 modios of wheat, whether the price increases or not, he can reclaim 10.

The reason for the disparity is that in money ordinary regard is not had (unless otherwise agreed upon by certain and legitimate causes), unless it be value or price. Unless otherwise agreed upon for certain and legitimate causes, it should not be restored except for equivalent value. But in the case of grain, etc., the very substance is considered, because loaned grain is not sought for the sake of the price of the grain, but for the sake of its own body and substance: therefore, even though the price of that may increase, it can repel as many measures as were lent on loan. Meanwhile, however, certain individuals speak in the same manner about these matters as they do about money. V. c. n. 14 et Bon. l. c. * (Vide dict. n. 782) * "Quæres: Quæ obligatio, et pœna sit usura- rum, et cooperiantium? " Resp. 1.

Usurer, even if not manifest, and these things are held to be restored; but also all those who effectively cooperate from the part of the usurer: for example, judges, temporal lords, notaries, family members, advocates, who in any way assist; or compel mutual parties to the solution of usury. I said (positively, or efficaciously) because having themselves negatively, they can permit usurers for a just cause and on account of the necessity of the poor. Therefore, in practice, on account of presumed will of the borrowers, those minor family members are almost excused. *(See what was said above note 786 and paragraph 2 note 78.*) « 2. A public usurer, or one notorious for such practices, does not hold admission to Communion at the Altar, nor is he absolved. Lib. 82. III.

Treatise. V. Of the Seventh Commandment of the Decalogue. Until he has restored usury, nor be buried in holy ground; and whoever knowingly is buried there, ipso facto is excommunicated. 3. Addition. c. n. 21. His testament is ipso iure void, unless he shall restore [the usurious amounts] before his death.

V. cap. 14 d. 22 * (Item usurarii sunt infames.) * ## DUBIUM VIII. OF PURCHASE AND SALE. ARTICLE I. ## What is purchase and sale? When is sale just? Is it necessary to determine the price? If a deposit has been given, is it licit to rescind from the contract? Is it required that there be a writing and a delivery? For the transfer of dominium, is it required either the solution of the price or faith in regard to it? To whom do the fruits pertain when the condition of the emption is fulfilled? To whom do the fruits of the thing sold but not delivered pertain? Whose pecuniary alienation is the thing bought? Is it valid if he sells another's thing? In what cases will the thing increase or decrease in value? What about a supererogatory commodity? Does a tax obligate in conscience? How many times does the price vary? Do precious things have greater latitude? Is deception always obliged to restitution? Is it licit to sell more than is useful for more to the purchaser? If there are other just titles, what then? Can things be sold extraordinarily for as much as possible? Does a common estimation vary the price?

And whether a sale is made under the sword or through female agents? What if goods are sold in small quantities? Can goods be sold to different buyers due to a delayed payment? Is it because of the reason of danger, or because the thing would be worth more? Can a thing be sold cheaper for credit? And when is it licit to sell with a pact of repurchase? Chapter III. Dub. VIII.

Of Contracts. 85 815 Is it permissible for a contract to obligate one to repurchase, at the discretion of the purchaser? What about the contract Mohatrq? Concerning monopolies: In how many ways is a monopoly formed? Whether one or a few who buy grain sell it more expensively and thereby transgress justice? Whether merchants conspiring with each other to sell goods at an excessive price are bound to restitution? And whether it be lawful for others to sell merchandise at the same price by reason of a monopoly held by merchants? Whether the contract be rendered vitiated by an occult defect? What if the defect be concerning the substance? What if pure things are sold as mixed and perfect? What about wine mixed with water? 821 Is it injustice to sell something for what it is worth? 822 What if the defect concerns quantity? 823 What if it concerns quality? 824 Is it illicit to sell at a usual price something due, whose debtor is not obligated to pay; or a commodity that will soon diminish? 825 If a thing has been entrusted to you for sale at a designated price, can you retain the surplus? And is the same to be said of him who purchases under a false name? 826.

What about those who sell cheap cloth from a loom? If the thing is sold to two persons, whose property shall it become? If the thing perishes before tradition, whose loss shall it be? What if after the transfer? Is it permissible

to purchase worthless promissory notes or debts for a low price? See further at Busemb. « Resp. It is a contract by which a price is paid for goods, and the goods are transferred in tradition. Sale » contrary. His justice consists in this, that the price be just, whether it realize the value of the thing, and otherwise.

Otherwise, if it is done otherwise than with a legitimate title, an injury will be committed, either grave or light according to the gravity of the excess, which consequently will obligate one in conscience to restitution; although in external forum one is hardly compelled to restitution unless more than half has been defrauded. V. Bon. d. 3. q. 2. p. 1. et 4. » It is to be noted I. Because, in order for a sales contract to be a game, it is necessary that the price be determined; which, if remitted solely to the buyer, does not constitute any contract.

That often. 9. concerning the control of purchase. Thus, if it is remitted to a third party, 1. ut. C. eodem titulo sive judicio Prudentum, ut recte ait p. 1. n. 2. But the psalm denies the common opinion, unless the price has already been set by law. And just as the price must be determined, so too (if the contract is to hold) the thing itself should be determined, at least in expectation, so that when this net is sold here.

V. . n. 3. Here it is asked, whether, when the thing has been given as earnest money, it is permissible for the giver to back out of the contract with the loss of the earnest money? Response given to P. Concina, tom. 7, p. 267, n. 2: that it can lawfully be done by virtue of a custom which is regularly such. It is accepted, unless the consideration has been given for greater security of the marital contract. Whether, however, in a doubt, if security for himself has been given, it is licit for the giver to retract?

It seems to be denied by La Croix l. 6. p. 2. n. 134., according to Onnate de D. 34. sect. 1., because the nature of this contract is an artha, so that a pledge may be given for the purpose of establishing an obligation not to depart from the contract under penalty of losing the pledge. But Concina affirms ibid. And this seems true to me in those contracts where such a custom is regular; for each one is presumed to wish to contract according to the custom by which contracts are regularly concluded. 795 Notandum II. That the contract of sale be perfected solely by consent, unless before the sale the parties agree to include in the writing, according to § 1. Institutes on Obligation according to Consent and § Emption: On Purchase and Sale. But dominium of the thing did not pass to the purchaser unless it be transferred by delivery, as is common: "He who has not yet delivered the thing to the purchaser, still himself remains the master." Otherwise neither does the dominium of the thing pass to the purchaser, even if it be

delivered to him, until either the price be paid by the purchaser, or offered, or at least a pledge, or suretyship, or at least faith from that person, according to §. Vend.

Ins. de Jérum divisione, ubi dici- tur: Vendita vero res, et traditae non aliter emptori acqui- rentur, quam si is venditori pretium solverit, vel aliode ei satisfecerit valuti ex promissore, vel pignore dato. But if he who sells has followed the faith of the buyer, it must be said that the buyer becomes the purchaser. Question however: whether the debt due from the sale should be paid to the chamberer at the time of the contract, or at the time of the delivery? Vasquez, P. cap. 2 n. 4. say that at the time of the handing-over. And they consider it probable: L. 2, c. 21, n. 1, Lugo, D. 26, n. 5, et Continuator Tournetius, t. 1, p 338.

Reason, because the contract of sale is perfected by the consent of the soil, as can be seen in §. un. Institutes on Obligations by consensus, where it is said: Consent makes obligations in purchases, leases... Therefore, however, this obligation is said to be consented to in these ways; neither script nor present thing at all is absolutely necessary; nor is it necessary for anything to be given. Nota III. Because, when a sale is conditioned and the condition fulfilled, the contract is retroactively brought back to the day of the sale; hence the fruits, if received during the interim, belong to the purchaser. This, however, is when the added condition is casual: according to the protestative type, namely, such that its fulfillment lies within the power of the purchaser.

Thus. 25. IV. Notandum quod periculum et commodum rei 798 regulariter spectent ad dominum rei; sed in contrahente venditionis, emptione perfecta, spectat ad emptorem semper ac est vendita res determinata: etiamsi res non sit tradita vel tradita sine habita fide de pretio (quibus casibus remanet res: in dominio venditoris ut dictum est; mox supra n. 796.), nisi aliter convenit. Thus: from §. Cum autem 3 l. That which has been said about periculum and commodum rei in seven following fiessi (pages). After the perfect, 1.

Code from the same title. Nevertheless, receive it if the seller is remiss in drawing; then too the danger pertains to him: according to lib. 17 ff. de Per. et comm. The same applies if the thing sold has been destroyed or deteriorated through culpable negligence, according to the law 2 of the same title. See Croix l. 3 p. 2 n. 605. However, if the perfect good has been sold and the thing sold has either been destroyed or deteriorated, according to the law 2 of the same title, the fruits hanging from the thing pertain to the buyer, as is commonly held, Book 86, Chapter 6.

III. Treatise. V. Of the Seventh Commandment. Decalogue, chapter 2, section 21, number 100. Lugo, Decretum, lib. 26, section 14.

Cross l. c. n. 977. with Mol. with Mol. and common. Tourn., cum Lugo, tamen dicit quod hoc valeat aestimationem quam habent fructus tempore emptionis: si vero fructus tempore venditionis essent immaturi; cum postea sint maturi, certum est quod re non tradita eorum incrementum debeatur venditori ut apud Lugo D. 26 n. 212; et ita quoad fructus pendentes; quoad fructus vero futuros rei dubitatur 1. To whom they look, whether the thing has not been delivered, or has been delivered with a pledge, or has been given on credit for the price, so that the dominium of the thing is still with the seller? The first opinion, which Tournely holds in volume 1, page 451, note 4, and Bon. de Contr., maintains this. D. 3 q. 2 p. 7 §. 1 n. 4. cum lib. 2 cap. 21 n. 109.

Cross book 3 page 2 number 978. Salmanticens. de cum cum S. Antonin. Arm. P. Nor does the stated rule hinder that the thing fructify for the Lord; for it is understood to refer to the absolute Lord, and not to the Lord of a thing which belongs to another, concerning which the danger of the thing pertains. Neither does it hinder to say that it is unjust to appear as if the buyer should receive the fruit of the thing and the seller not be able to enjoy the price; for it is replied that this advantage to the purchaser is well compensated by the risk he himself has assumed regarding the perishing of the thing. However, the price due must in itself be equal to the price paid, unless the seller suffers some loss from the delay in payment or a cessation of profit; then indeed the buyer would surely have to make reparation for that, as all teach. But it is certain that if the seller had intended not to have a valid sale until after the price was paid, in that case both the risk of the thing and the advantage of the fruit should pertain to him, unless the thing has been delivered without a pledge or on simple faith of the price; then there is doubt whether the seller can agree that the fruits should pertain to him until the price is paid?

The first proposition denies with P. Concina tom. 7 pag. 269. n. 11 et S. Arm. 4 R. 139, who considers it probable. Reason, because by granting an extension for payment of the price, the seller cannot reasonably expect to derive any advantage from this time; yet, if interest has been compensated by the buyer at a predetermined time for being in arrears with payment. The second opinion is more common and more probable, and it is affirmed by Mol. D. 368 n. 9. Fill. tr. 35 c. 8 q. 2 n. 177 cap. 7 dub. 21 n. 3. cum .

Table 3 question 2 page 7 section 1 number 5 with Covarrubias. Gom. et Reb. et idem tuetur Petrocor. tom. 2 pag. 393 Ratio, quia venditor justè potest dominium directum transferre in emptorem, et reservare sibi

dominium utile, ut fructus percipere valeat, usquedum pretium solvatur; et tunc non exigit fructus ratione solutionis delatae, sed ratione ipsius venditionis, hoc pacto inita: Hoc tamen casu benè ait Petrocorens. loc. cit., quod si praedium pereat vel deterioretur, non possit venditor exigere id quod ratione praefatorum fructuum emptor promiserit ei correspondere. It is asked: Of whose property is the thing bought with alien money? It is responded: Of the buyer's, if he purchases it in his own name, according to l. If thereby. C. concerning the Vindication of Things; where it is said: If from that money, which you had deposited with him, he has acquired possessions for himself, and those possessions have been delivered to you... against his will, it is an injury to transfer them to you unjustly. Receive it, if the money belongs to the Church, or to a minor, or to a soldier, as Boni says in Lib. 68, cap. 68.

III. Treatise. V. Of the Seventh Commandment of the Decalogue. Rebel. c. 2 n. 29.

Because then that thing is acquired. Question 2: Whether a contract is valid if another person's property is sold? Resp. ex lege. Bem alienam, 28 ff. de Contr. empt. validum esse quoad translationem dominii, non rei, sed pretii: unde vendens mala fide acquirit dominium pecuniae, sed tenetur emptori omnia damna restituere: qui autem vendit bona fide, non tenetur ad damna, neque ad evictionem, ut dicunt. Tr. 33 D. 5 p. 28 §. 1 n. 1 sed tenetur quidem pretium restituere emptori, etiam si cum eo convenerit non tenendi de evictione, ut exprimitur in l. Buyer §. However, whoever... ff. de Action empt. nbi: It must be said the same thing, even though in the sale it is comprehended openly that nothing will be delivered under the name of eviction, nevertheless a price ought to be owed for the thing evicted. For it is unjust that the seller should make profit at the expense of the buyer's loss; see Palaum loc. cit. § 4 n. 2.

But it is objected that unless there has been an express agreement for not returning the price, then . It is excused 2. unless the seller has been made poor, because either through a mistaken generosity or for sport he has expended the price, as they say. Excuse is also granted 3. unless the buyer knowingly purchases a thing belonging to another or obligated to another; then himself, unless there was an express agreement concerning eviction, cannot seek repayment for the penalty of his own crime, nor even the price, as it is established in law. If a piece of land. C. de Evict. See c. n. 16, qui deinde n. 18 bene advertit, ex hoc non inferendum quod pretium eo casu possit à venditore retinèri, nam in foro conscientiae illud emptori restituendum est, in foro autem externo Fisco adjudicandum.

It pertains, however, to note something concerning the obligation of

eviction. Eviction is due not only in a sale when the thing is evidenced to be taken away from purchase according to the law 1 and following on eviction, but also in exchange, donation for debt discharged, estimation of dower, transaction, division of inheritance, and in any other onerous contract, as thoroughly proven by 33. D. 5 p. 8 §. 1. Not however in a contract involving profit; hence the donor is not bound to eviction, unless perhaps the donation began with a promise of an indeterminate thing, and subsequently he delivers the thing that can be evicted: see c. ex n. 11. That is to say, in order for the purchaser to be able to act regarding eviction, he is bound to notify the seller of the lawsuit brought against him before the time allowed for probation has elapsed.

Buyer, C. de Evict. et l. If the thing, ff. The same. To which however minors and churches are excused by denunciation: c. §. 3 n. 5 and 6. As for the document delivered through the denunciation, the seller is bound to provide the buyer with documents for defense; but he is not bound to defend unless he has promised to do so; yet he is bound to bear the costs of the lawsuit, as it is said in Si plus, §. Nota ff. de Evict. et l.

Who concerning an absentee. ff. de Procurat. If however the matter is due to malice or fault of the judge, or through violence from another, or through negligence on the part of the buyer, the goods are lost; in such cases the seller is under no obligation; for the risk of fortuitous events belongs to the buyer, as rightly stated: "That which concerns the buyer, he can acquire even if the thing be not useful to him," more so if it pleases the buyer gratuitously, and similar circumstances that make the thing less valuable. It does not hinder that the seller, being driven by necessity, sells cheaply; for selling remains voluntary, says Cajet. c. n. 21 et 23. It is nevertheless gravely to sin against charity if out of necessity the poor are compelled to sell their goods very cheaply and be excessively exploited by those who buy from them. c. n. 10.

It must be noted that a thing is esteemed to contain more of reason and labor and work when it is in the hand of a merchant than when it is in the hand of another. Therefore, however, it is not illicit to sell a thing to another for as much as the seller received from the merchant. 2 c. 21 n. 24. Notandum 2. quòd concursus emptorum et penuria mercium auget pretium rei; paucitas contrà emp torum et copia mercium minuit pretium, 102. cum communi. P. Concina. tom 7 p. 30 n: 101. Tourn. tom. 1 p. 442. 90: Lib. III.

Treatise. V. On the Seventh Commandment Speak. So it must be noted that the price of the thing decreases when the article is little useful to the buyer, and here it was bought for the sake of grace by the seller. It is a

common opinion with Tourn., tom. 1, pag. 443, and at the end with others as well.

Hence it comes that merchandise exceeding in value may licitly be purchased cheaply, as commonly taught by P. Concina 1:7, page 301, note 18. Tourn. l.c., Diana p. 1 tr. 8 n. 36 et cum aliis communiter, contrà Roncaglia de qui ait ex hoc solo capi- te, quòd res ultro à venditore offeratur, non esse cau- sum, ut pretium rei decrescat, nisi accedat alia circumstantia, nempe paucitatis emptorum, vel pluralitatis offerentium: Sed verisimiliter alii DD. communiter, ut diximus, contrarium docent, quia regulariter in hujusmodi ultroneis venditionibus pauci invenientur emptores. There is doubt. 1. How much the thing decreases when offered gratuitously. M.

Serra, II, 2, qu. 77, a. 1, dub. 3, cum Conrad. et Reb. Salas; Palac. Barth. to St. Faustus, and Magala according to. They feel that it degrades even to the point of becoming half. But more probable is Cajet. 2. 2 q. 77 art. 1.

Good. Doctor 3, question 2, penitence 4, number 23. Fillius tractatus tertius caput quarto numerus septuaginta novem. Sporer in his seventh book, chapter eight, section four, note six, opines that it is fitting to diminish even by a third part. There is doubt 2.

Whether the same thing should run when goods are sold because of poverty? The first opinion affirms it; and Cajetan holds to that, chapter 1, article 1. Conrad. Case resolved page one question one hundred fifty-seven. Bonaventura ibid., with Soto, Suarez, and others; yet a deficiency in the seller's resources does not make the price to be altered.

The second opinion denies this, which Tournely holds in his first volume on page 442 and with P. . ll. cc., namely, that if a thing is bought merely for the grace of the seller, it should not be purchased otherwise. This second opinion is indeed more equitable and altogether commendable; but in reason, the first opinion does not seem unreasonable. Provided that I accept, which should not be, that things commonly bought and sold, such as grain, oil, wine: But differently regarding others which are not so easily sold. Neither does it prejudice the case, in which the buyer required that thing, because it would happen by chance, and the circumstance does not alter the value of things. When however one sells under compulsion; and you did not purchase it for the sake of his grace, easily you can sin against charity, as Mazotta says in loco citato: 'By purchasing at so cheap a price as you did merely for your own benefit.'

Qui autem venderet in gratiam emptoris, sentio non posse vendere plus pretio supremo, nisi concurreret aliqua extraordinaria circumstantia, nempe raritas rei, multitudo emptorum, incommodum venditoris, vel specialis ipsius venditoris affectus ad rem, ut dicemus infra: alias, si adesset tantum commodum, vel affectus emptoris ad rem, utique non liceret augere pretium, ut dicemus cum S. Notandum 4. quod, si tam emptor, quam venditor ignorant pretium rei, tunc justum futurum sit pretium illud, quod convenitur, quia uterque tunc exponitur periculo jacturae. Thus Tournely tom. i. p. 446 with « 2. The buyer can purchase at a lesser price; this is because he purchases many things at once; for then it releases the seller from many cares and makes him ready for new acquisitions; hence justly the price decreases. 4 n. 13 ex c. 21 num. 38. Lugo etc. ap. . 149.) * 3. As regards the seller, it commonly ought to be sold according to the price assessed by law or custom; and if there is none, that will be considered just which is imposed by the estimation of moral men.

Which does not consist in the indivisible, as anxiously to scrupulize 92 Lib. III. Treatise. V. Of the Seventh Commandment of the Decalogue.

It ought to be divided into the lowest, middle, and highest parts, or as others call them, pious, moderate, and rigorous, so that within the breadth of this price it may be lawful to sell and buy now at the highest, now at the lowest. It must be noted that the price fixed by the Republic obliges in conscience, as S. 1 ad 3 with the common understanding also includes Ecclesiastics (although it is probable that other laws do not oblige Ecclesiastics), yet it is understood, unless notable changes occur, that 2. with Reg. n. 116 and 135 or if the year is sterile, as will be explained shortly. Whether, however, at that time the best thing can be sold more cheaply, or mixed with other things in such a way that it becomes like other common things? Asserting probably P. 306 n. 29 and Ratio, because the Principal, in taxing the price, regards only the ordinary value of the commodity. Whether, however, the seller can compel the buyer to discharge the purchase in a determined species of money?

They say that it is probable that it can, because the Psalms. But P. Concilium denies in loco citato num. 28. I hold it possible to coerce to pay a usual money; namely copper for trifling goods, silver for goods of great value. It is probable in years that are very sterile, not to oblige a tax, as Covarruvias et alii say; see n. 132. 864 Notandum 2. that the price may vary by reason of time and place; attention should be given to the time when the thing is delivered, and the place where the thing sold is located, not however where the contract is made, unless the seller agrees for this transfer to occur, and a thing of little value should sell at a great price,

where it is greatly esteemed. See the aforementioned note n. 808.

On the contrary, the seller is not permitted to sell anything for more than it is estimated to be worth there, even though he may have acquired it at a higher price and expended much effort in transporting it there, as teaches S. n. 100. Note 3. that the price of things of lesser value has a narrower range than that of precious things; for wine, or something similar which is worth 5 can be sold for either 6 or 4. Or if it is worth 10, it can be sold for 12 or 8, as Tournely says in tom. 1, pag. 442, and Caj. at pag. 294 n. 2, they say if it is worth 100 it can be sold for 105 and 95. But a house or a villa, which perhaps has been sold for twenty thousand, might afterwards be bought for twelve thousand. V.

Lugo, etc. Notandum quod licet in foro externo non validetur, nisi deceptio sit ultra dimidium justi pretii: in foro tamen conscientiae etiam deceptio infra dimidium obligat ad restitutionem. And thus altogether it must be said (contrary to certain Jurists) according to S. Th. 2. 29. 77 a. 1 ad 1. . 2 c. 21 n. 21. Lugo, Decretum, lib. 16, n. 81 et n. 85, cum communi. And this is even if the contract was entered into in good faith; for then the deceiver is bound at least to that which he caused the deceived one to do. Now if, as we noted above with 446 and cill.

Here too it must be noted that commonly faith is not given for the lies of sellers, since these are not sufficiently regarded as common stratagems; hence they themselves regularly are not held bound to restitution according to Bon. et Reb. I said regularly, because if at any time the seller certainly observed that the buyer was inclined to believe in lies and thus to purchase more expensively, then indeed he is not excusable from injustice. « 4. If anything is very useful to the purchaser, it is not permissible to sell this merely under its name for more than a just price: because the utility belongs to the purchaser, not to the seller, Bon. The cited text from number 27: chapter 2, question 27, article 4. As is commonly stated in Thomas 2. 2 q. 1 77. art. 1 who says: If anyone is greatly benefited by a thing according to 94 Lib.

III. Treatise. V. Concerning the Seventh Commandment of the Decalogue: "He who receives another's property shall not be harmed by lacking that thing; therefore, he should not overcharge for it: what advantage accrues to the other does not come from the sale but from the condition of the purchaser." 807. » 5.

It is permissible, however, to sell for more than the current price, if there are other good titles, and at the same time you advise the purchaser: because then no injury is done to him. Such are, for example, loss of profit,

or emergent damage, or inconvenience, or trouble that will come to you from the sale of the thing: or a particular affection, as if you should receive it from your superiors, from a Prince. » Item si res sint novae, rares, et singulares; ut v. g. foreign flowers, birds, almost everywhere, ancient monuments, picture; coins, . 3 t. 4 c: 17 §. 5 n. 10. Con. l. cit. n. 15 ex .

Therefore, it is certain that a thing can be sold for more on account of the damage arising or profit ceasing as a cause of the sale, from 2 q. 77 art. 1. Now concerning these matters, the buyer is instructed as commonly taught above with Busemb. as mentioned before, 2 e. 21 n. 26. Lugo D. 26 n. 89 et Bann. quia taxa respicit rem tantùm secundùm se, ut c. cum 1 p. 444 in fin. et Bann. ac l. c. Quia tunc ipse venditor, non jam emptor, esset causa talis damni. But the opposite seems more probable to me, according to what is said in De Usuris, n. 768, v. And moreover, in conclusion.

Reason, because by accepting the contract as buyer, he himself is already the true cause of the vendor's loss. It is asked I. Now, however, on account of a special affection which the seller has toward the thing sold, can he sell it for more? Tapia denies it on account of a special affection which the seller has for the thing to be sold. But commonly and more truly they affirm. ll. cc. with Bon. et Mald.

Reason, because the deprivation of a thing on account of which one has a special affection is truly estimable in price. If the reason Tapia held to be valid were true, even then neither on account of the damage incurred nor on account of lost profit could a thing be sold for more than its worth, because neither of these brings anything of advantage to the transaction. It is asked II. Whether things which are not necessary for common sustenance, such as extraordinary gems, precious horses, indicator birds, singular paintings, and similar items, can be sold at whatever price one pleases? The same question is asked regarding singing, dancing, and the abuse of women?

They affirm Diana page one, tract eight. Prohibition. Reg. Serra, Val. c. 2 n. 92 rightly probable they call it. The reason is that when a thing does not have a price nor one legitimately imposed by law, namely, taxed by law, nor a common price, that is to say, according to the general estimation of men, it is deemed just; which is fitting.

I think that it is less probable to deny it; as they hold. Lugo D. 26 n. 47 3 n. 93, cum vere est quod habeat quandam taxam; juxta arbitrium prudentum. Nevertheless, an example from this is the use of a virtuous woman, who being of inestimable value; that one may lawfully receive much for her without injustice. It is to be noted 1: when n. 9488 with .

and Prado state that common estimation of a thing in some respect renders any just price in its place; thus among the Japanese things like mirrors and knives are greatly esteemed, etc. It is to be noted 2: when Lugo D. 26 n. 45 states, from 1. 2 C. de Resc. vend. Fraud non existat modo, nec sit pretium legi subjunctum.

Ratd, quia tunc Potestas publica approbat pro justo pretium illud, quod publico emptorum concursu probatur. The same is said of the revenues from benefices, commendams, etc., which are placed under the spear, because then, if buyers concur, the matter becomes more estimable; but if they do not concur, it becomes less valuable. And it does not seem to be sufficiently probatively opposed to this. The author 349 who wrote enixè 96 Lib. III.

Tract. V. Concerning the Seventh Commandment of the Decalogue, it is attempted to demonstrate that if a thing is adjudged to be offered by someone for a notably lesser price, he should himself equate it with the legitimate price. For if this were the case, I say, in the situation where the buyer offers more than the supreme price in a bidding contest, the lord would be bound to restore the excess of the thing; and hence it would follow that the thing cannot be adjudged to the last offerer, if the first offerer had already presented the supreme price; but this no one will say. Therefore, if a thing is adjudged to the offerer beyond the supreme price, this certainly happens because the laws decree that to be the just price of the thing.

Therefore, if the lord is able to retain the excess, even the buyer can keep the thing, retaining it at a price less than the lowest price paid for it. We have said, provided fraud does not intervene, which can occur either on the part of the seller, namely if there is a hidden defect in haste or if he introduces false witnesses; or on the part of the buyer, if by deceit, threats, or importunate entreaties he impedes so that others do not offer more. For thus they sin and are bound to restitution until a just price is reached; thus commonly on p. 446. Lug. D. 26 n. 45. tr. 4.

R. 17. and also 96. with others frequently throughout. The same is correctly taught regarding proxenets, or others to whom the sale of goods has been entrusted, who expose wares for sale or goods at a price at such a time when they know that few buyers will be forthcoming in the future, so that the goods may be assigned to their friends. But a doubt arises whether, when the thing is exposed for sale, the purchaser can ask others to bid (though not with importunate offers), so that they do not offer more, and he himself may obtain the thing at a low price? P. Megala negat 2. 2. 1. 2 e. 6 q. 5 n. 146 cui adhaeret Cobass, Th. 2 c. 21 n. 46 v. I say to

the Third, where he says: In a similar manner buyers sin against justice when they conspire or ask others that something not be allowed to be obtained at a just price but at a lesser one; for the reason (note) sellers have a right to a higher price.

They commonly affirm Lugo D. 26 n. 45. 1 tr. 8. R. 76 with Villal. Reg. Vega, . and P. c. 2 n. 58, with Dubium 2, does it happen that a purchaser may agree with other bidders in a sale contract so as to offer no more? It seems that Diana, in her Response 76 and with other cited authorities similarly, affirms, citing the words of Peter, lib. 3, cap. 2, n. 84 and 85: for he thus states: "For it is not just, according to my judgment, that any monopoly of merchants be such that they do not sell except at a certain price."

Et idem est, si quis in publica licitatione rogaverit amicos, ne plus dent, ut ipse justo pretio (infimo tamen vel mediocri) rem habeat juxta illud forum; iste enim utitur industria, ut res justo pretio detur, timens in emendo umbrementum magnum in pretio. But to me and to other learned Juniors it seems that the opposite should be said, at least in the case where the matter is put up for auction by the judgment of the Judge. Reason, because then the Lord of the thing is bound entirely to deliver the thing to him who offers more; wherefore he commits an injury to the buyer if by offering only the lowest or moderate price he impedes the seller from obtaining the highest price, which right he has, namely, that it not be hindered by him in obtaining. Since therefore such a seller is constituted in danger of selling the thing for a small price, if no other buyer appears offering more; so he has the right that he not be deprived of, by hope of obtaining a greater price, if several offerers intervene, who are led by emulation to increase the price: for justice and the nature of bidding seem to require that equality be preserved. And the same seems to be held by Lugo on the 26th day, note 45 at the end, where, although he permits asking, he nevertheless does not admit entering into a pact: "6."

Qui res minutim et in parva quantitate vendunt, possunt aliquanto carius vendere quam qui in magna quantitate, quia debent majores labores, expensas, etc. impendere ad eas conservandas; et sic quidem excusant caupones, et stabilarios, qui avenam, foenum, paleas, etc. carius vendunt quam alii; dummodo pretium iis non sit taxatum. Salas. . 98 Lib. III. Treatise. V.

Of the Seventh Commandment of the Decalogue. It is common among 3 n. 140 with 7. It is not permissible to sell more dearly than the exact price for a delayed solution, or to buy more cheaply than the exact price for an advanced solution: because in a sale made on credit, or in an advanced

solution, there is a virtual exchange, and henceforth usury, if anything beyond the lot be demanded. Understand this: lest another title concerning usury intervene from those aforementioned above; or unless the price increases in some other way, for example, due to the frequency of purchases, etc. Bon. l. c. ex Regin. super dub. Therefore, it can be said that a thing may be sold more dearly on account of a delayed solution, or bought more cheaply on account of an anticipated solution, by reason of the damage arising or the profit ceasing, provided that the purchaser is warned thereof.

They nevertheless note Villal., that it cannot be excused for those who have such a great abundance of goods that they need to sell part of them on credit; or for those who have an excessive abundance of money so as always to keep something in reserve. (But see what is said above, d. 771.) They rightly note further that this cessation of profit rarely happens with these sellers, because if they were to sell goods numerously for a specified sum of money, they would not be able to divert them; and thus they already earn on credit money which they would have earned by selling numerously. Hoc quia dicunt, satis esse illis vendere ad creditum pretio summo id, quod alioquin infimo venditurі essent; sed non amplius. Ratio autem periculi in exigendo pretio etiam carius res licite vendi potest eodem modo quo dictum est supra de usura n. 776. But in the sale it is certain that warning must be given to the purchaser regarding these titles, as stated in lib. cum Serra. It is certain that a thing can be sold for less, if the price is to be delivered at a time when the thing will be worth more; provided that from the seller until that time the thing be kept; just as it can be bought cheaply in reverse, if the thing is to be delivered at a time when it will be worth less. . 2 n. 146 et 147. 81. It is asked, whether according to the custom of the place, after any other title has been precisely determined, it is permissible to sell the thing for credit at a higher price than it would be sold for in cash?

The first opinion denies it, and seeks to avoid it in this way, etc., ap. The second opinion is probable, which those hold, chapter two, number fifty-six. Lugo D. 26 n. 107, cum de 7 Præc. n. 24: Nec obstat quod emptores cogantur ad sic emendum à sua necessitate; nam hoc per accidens se habet: cæterum verificatur quod eo casu concurrat emptorum multitudo, qua justam reddat talem adauctam aestimationem. The more so, because it is impossible in a multitude of buyers that there should not be some risk of losing the price. It is no good saying that then it is not the multitude of buyers which increases the price, but rather the mode of buying; and this mode is usurious; for it is replied that indeed not the mode gives title to increasing the price, but the multitude of others buying in such a manner, even though the multitude arises from such a mode.

From these words it is equally probable that it may be lawful to purchase a thing for less money by means of numerated payment in anticipation of settlement, if such a custom exists somewhere. Reason, because then few are the buyers who purchase by anticipatory payment; and on the contrary many are the sellers selling in such a manner, whence it arises that goods increase in value by themselves. Thus 26 n. 120 with Mol. . item Bon. 4 p 277 namely: as regards this, that the reason for the scarcity of buyers might hold good, it would have been necessary that this rarity be present at the time of the transfer of the thing; but at the time of the transfer this supposed scarcity of buyers is not had. For it is replied that the contracts of purchase are not perfected at the time of the transfer, as stated in 100 Lib. III.

Trace. V. The Seventh Commandment of the Decalogue is presupposed by Habart; but at the time of contract initiation, although dominium over the thing is not transferred unless after delivery, according to what is stated in n. 705. Whether, however, a chirograph can be purchased by a minor for an anticipated solution? See below n. 829. §13. "8."

It is lawful to sell a thing with a contract of resale, that is, so that the buyer be bound to resell it to you at your appointed time, or whenever you wish; provided that true and not fictitious purchase takes place, and that no hidden usury intervenes, Mol. d. 375. 14 etc. They add, according to the estimation of that work and the price of the contract, that this should be diminished. V. C. Lug. d. 26 n. 189. Multiple conditions are required, so that the revocation with a pact to repurchase may be just. I. Plures conditiones requiruntur ut vepditiio cum pacto retrovendendi sit justa.

That the price may be diminished according to the estimation of the burden imposed upon the purchaser. Hence the price of the thing sold with a repurchase clause is said by some to decrease even to a fourth part, by others to a third, by others at the discretion of the prudent, as Bonaventure and commutative justice say; but n. 67 says it should decrease even to the minimum price, not beyond: But this seems rather improbable, for truly it cannot be called a tenth, because the purchaser has the right to the minimum price, even without such a clause. II. Condition is that no pact be appended which would retrocede for more or less; but it is licit to have a pact by which it would retrocede at the same price, even though the thing has increased in price, as . 2 n. 115. Bon. et n. 64.

Hence a lesser price is paid, because the seller has the liberty to repurchase the thing at the same price when its price is increased. III. Condition is that it not be imposed upon the seller, that the risk of the sold

thing be with the seller, since this regards the buyer in itself; unless the price be increased according to the estimation of the risk. Thus Samanticens. n. 65. IV.

Condition that the thing be restored as it is delivered, either void or with fruits. It is probable, however, that on account of the pact of retroversion, the seller has an action in rem against the thing, even if the buyer has sold it to another. See note 66. Si ad venditionem apponatur Retrocus Gentitius, sive pactum; ut consanguineus proximior venditoris habeat jus infra certum tempus rei reemendi; non poterit is rem reemere; ut aliis tradat; cum hic Retractus tantum institutus sit ut bona conserventur in familia; ita . 6 c. 9 n. 11 cum aliis, ex l. Doubt 14.

C. de ut ita DD. ibidem communiter, ex legibus 2. Of feuds, from the beginning. Whether it is permissible to make a contract for redemption at the discretion of the emperor? The first opinion denies what Habert holds in his fourth treatise on page two hundred sixty-seven: Conclusion two. Reason, because although such a contract is made under the name of sale, yet it does not seem that anything is truly sold; but rather that it is given as security, so that the purchaser may receive fruits from his own money, which he can recover at his own will.

They follow the same opinion as Tap. However, they nevertheless limit it, unless the reduction in price is limited to the value of the fruits; or unless the property is sold at a cheaper price initially, according to the expectation of the fruits to be perceived over some time designated. The second opinion, however, most commonly affirms, and holds this: 2 c. 21 n. 113. Lugo D. 26 n. 200. Mol.

D. 377. . 33 D. 5 p. 13 § 1 ex n. 1. . 2 p. 124. Goodness. D. 3 Question 3 p. ex n. 2 cum Cov. et Garcia; item P. Navarr. n. 60. I consider this second opinion certainly more probable, although these conditions nevertheless hold true. I.

That there may be a true intention of buying and selling, and not merely of lending. II. That a true mind may be present for amendment and sale, but not for leasing. That the buyer pay a greater price, according to the estimation of this burden which it imposes on the seller; when he himself may wish to re-sell it; in which all agree. This burden, however, some think ought to be estimated as high as a third part of the price according to c. III.

That the seller may not be obligated to repurchase at a greater price than

he receives, as Quidquid postmodum subdat teaches, namely, that this can be excused on account of common usage and estimation of men; which I find very displeasing. Hence I hold that in such a contract the purchaser cannot obligate the seller to anything other than to pay the price, according to the value of the thing at the time of the sale; and if the thing has deteriorated, according to its value at the time of repurchase; for the excess of just price given to the seller is altogether directed towards that, by reason of the burden laid upon him to repurchase at the discretion of the purchaser. Provided that his conditions are observed, to me it does not seem altogether illicit the aforementioned pact of re-purchase: just as it is permissible the pact of repurchasing for the benefit of the seller with a reduction in price, so contrariwise with an increase in price it should be deemed permissible the pact of re-purchase for the benefit of the buyer, since thereby burdens are compensated on both sides. Neither let this be called a virtual loan, since it is a true purchase and sale, differing in nature from the nature of a loan; for in a loan, the thing pledged perishes with the lender, but here, if the thing perish, it perishes for the purchaser, or if it be deteriorated... Note that such a contract is forbidden by Mohatra, namely when one buys goods from you at a greater price on credit, with either an explicit or implicit pact that they will resell to you later at a lesser price in reckoned money. From this proposition 40, condemnation by Innocent.

XI. The licit contract of mohatra is also valid with respect to the same person, and together with a contract of retroversion, previously initiated, with the intention of profit. Reason, because it is evident that usury can be disguised. However, if a thing is sold without any previous pact for its return, even at a very low price, to the same seller himself, the contract of sale is licit in itself, provided that there be no usurious intent. Thus Les. l. 2 c. 21 n. 130. cum .

Moreover, Lugo adds D. 26 n. 208., that it is not illicit for the seller to sell goods if the creditor sells them and says to the buyer: If you wish to purchase them at a defective price in money counted out, I am ready to buy them. When speaking speculatively, this does not seem illicit, but practically I think it is very difficult to suppose that this seller lacks the mind of a usurer. « 9. Monopoly, id est, quando unus vel plures hoc efficiunt, ut ipsi soli aliquid vendant; vel cum mercatores conspirant, non minorem vendere, non sunt contrà justitiam; modo non conspirent ultra jus pretium vendere. Just as against the Rebel. See.

C. Lugod. 26. sect. 13. It will be a privilege of princes or magistrates when such a privilege is granted to one or a few, that they alone may sell something; and even for them to set a price, and thus provide that subjects are not burdened. See 20. Card. Lugo l.c. and 18, where he rightly notes

from g. bibliopolis, that no other person may sell such a book, or that there be only one, or two shopkeepers in some place; nevertheless, even if one or few establish it by their own proper authority, for example, to regulate the goods of a certain kind, such as grain, wine, oil, etc., and then themselves sell them at higher prices, they always sin against justice with an obligation to restore.

The same thing is called a monopoly and the selling of one; for a monopoly is called the sale by a single seller. Four therefore are the ways in which monopoly can occur. I. If the Prince grants someone a privilege to be the sole seller of a certain kind of merchandise; this is certainly legitimate. II. Si Princeps aliquem privet, ut solus vendat quoddam genus mercium; et hoc certè licitum est.

If the merchant hinder others so that other goods do not arrive, in order that he himself may sell his own goods with damage to the Republic; and this is certainly illicit, and he is bound to restitution of the damage. And the same must be said of him who spreads false knowledge, that he cause the ship to be submerged, or similar falsehoods. III. If one or a few purchase goods with the intention of subsequently selling as many as possible. IV.

If sellers conspire among themselves regarding price, so that they do not sell for less. But concerning these two modes, mentioned in the last place here, there are two great questions agitated. Lib. 104. III. Treatise. V.

From the Seventh Commandment of the Decalogue. Section 6. Inquiry 1. Whether one or a few merchants, who at the time of harvest or vintage buy all the wheat or wine at a cheap price then current, so that they may later sell it more dearly, commit a transgression against justice? It is certain that this is licit if commodities are bought which are not necessary for the sustenance of life, or for the common state of the Republic, such as pairs of precious gloves, generous horses, women's ornaments, and similar items. It is certain that it is licit to buy wheat, wine, etc., so that they may later be sold at the common price at which others would sell them from afar; or so that they may be sold to citizens with moderate profit, after the citizens have already purchased for themselves necessities and conveniences. Ià Bon.

D. 3 g. 2 p. 2 n. 3. when and in this manner also teaches S. where he says: A merchant can lawfully purchase those grain harvests at a higher price during the harvest time, intending to sell them later, so that thereby he may earn honest profit by his own labor. The question therefore is whether those who buy all these necessary things for sustenance with the intention

of reselling them at a higher price later on are bound to restore them? The first opinion denies this, and this view is held by 2. c. 21 n. 151 and Mol. D. 145. at the end. Reason, because such buyers, although they sin against legal justice by their purchase, nevertheless do not injure commutative justice when they buy at current price; Otherwise, they would also be said to injure it, who, by competing together, might induce charity, because in that way themselves would also be the cause that the price would be increased.

This opinion, however, seems to me least probabiiis, because the constitution of price does not depend on the private arbitrium of sellers, but on the common aestimation of citizens; nor is it hindered by the parity brought about by concurrent purchasers, because then the action of price occurs per accidens; and in this way the price is increased solely from the will of the seller. And thus rightly Saint Anthony taught in loco citato: Si autem annonas temporis emit, et tantum congregat, ut postea compellantur homines emere ab uno ad placitum suum, et ideo vendit care ut vult, enormiter peccat contra proximum et Communitatem. Therefore, the second common and true opinion, which Soto holds in lib. 6 cap. 2. Sylvest. v. Emphio, qu. 10., art. 2, ad 4.

Cross l. 3 p. 2 n. 946. when it teaches that these buyers are to be held bound to restore the damage at the discretion of prudent men as regards other buyers, and Lugo D. 26. n. 176 follows the same judgment; nevertheless, if the price is increased above the highest price at which the goods would have been sold, had no monopoly existed. Otherwise, they probably hold the same at n: 177. Good. D. 3 q. 2 p. 5 n. 4. c. 4 n. 805.

Cross c. n. 946 and see Lugo d. n. 177. Ban. so that such buyers do not sin against justice if they sell at a high price, which would have been avoided if the monopoly had not preceded it. Reason, because each one has a right to sell his thing at a rigorous price. An autem hujus-modi venditor (si unus sit qui merces illac congragarit) peccet tunc saltem contra charitatem? More affirm this, but Holzmann denies it c. 4 n. 805 and Lugo D. 26 n. 178. Since the mode does not induce others to sell more dearly; for no one is bound to neglect his own advantage in order to avoid another's damage when he is not bound to avert it.

Quaer. II. Whether merchants conspiring with one another to sell goods at a more advantageous price are bound to make restitution? It is certain that they are bound to restore if they agree to sell at a price exceeding the highest; just as those craftsmen and their like who agree between themselves not to lend their services except for a price exceeding the utmost are equally guilty against justice. The question therefore arises:

when such an agreement is made, so that goods are not sold unless at the highest price, does a sin against justice thereby occur? The first opinion affirms what Layman teaches in book 3, treatise 4, chapter 18, note 43.

Sot. l. 6 Question 2 a. 3. Tournely t. 1 p. 477. Spurium de septimo praecepto cap. 5 n. 103. . 106 lib. III. Treatise.

V. On the Seventh Commandment and the Decree according to St. Thomas Aquinas. C. de Monop. hoc graviter prohibetur sub privatione omnium bonorum et perpetuo exilio; tum quia hujusmodi Mercatores per medium iniquum cogunt alios emere pretio illo supemo. However, the second opinion states: these do not sin against justice, and this is held by . 2 c. 21 n. 145. Lug.

D. 26 n. 172 et 173.: 2 (qui vocat communem) 8 c. 3 §. 12 n. 11 cum c. 2 n. 56 cum Tap Bann. Reg. et probabilem vocat c. n. 42 cum P.; sed haec secunda non minus probabilis videtur, et forte probabilior, tum auctoritate DD. tum ratione; quia non apte dicitur quod venditores convenientes vendere pretio summo cogant alios ad sic emendum, cum isti voluntarie emant; si coguntur, non coguntur a venditoribus, sed a sua propria necessitate, quae non potest dici vera coactio ex parte venditorum emanans. Therefore rightly speaking, it should be said that purchasers are rather impeded by this convention from selling at a lesser price. Cum autem sic impediuntur, non irrogatur eis injuria, nisi impediantur minis vel mendacis, sicut accidit in omni alio contractu: Alius etiamsi aliquis tantum suaderet venditori ut venderet pretio summo, etiam peccaret contra justitiam, et teneretur ad restitutionem; quod iidem Contrarii negant. This reason is taken from the general rule, as we said in nos. 582 and 584.

Just as no injury is inflicted upon another person who is prevented from leaving an undue inheritance without force or fraud, even if the testator was determined to leave it to him; so too in our case. Although therefore such a convention is illicit because it is prohibited by positive law, it is nevertheless not injurious according to natural law. Nor is it valid to say that the very contract between the seller and buyer, by which they mutually obligate themselves not to sell except for a high price, would compel purchasers to buy in such a manner: For it is replied that this agreement, since it is freely entered into, neither involves force nor fraud. It is replied 2. that such a contract, being illicit and contrary to charity, as we shall say below, cannot induce any obligation according to the Rule. Jur. 69. in 6. where in evil promises faith is not expedient to keep; according to what was said at no. 172.

Hence, given the probability of this secondary opinion, it is more probable that these sellers are not bound to restitution as we said in n. 669. It is not doubted, however, that in such a case the Judge can reduce the supreme price to the medium, according to Lugo n. 177. Nor is it to be doubted that the aforementioned sellers would gravely sin against charity by conspiring in this manner, as Lugo teaches in n. 175 with Molina and the common teaching, from which, says Lugo, one must not deviate. Reason, because although charity does not oblige you to sell for less than the supreme price, it seems nevertheless to oblige you not to dissuade others from doing so, lest they sell for a more moderate price: Just as, if charity does not oblige you to give alms, it seems nevertheless to oblige you not to dissuade others who wish to do so. But here another doubt arises: whether it is permissible for others to sell goods at the same unjust price after a monopoly has been factually established by merchants.

Let it not be said by Tapia, c. 2 n. 57, because that price is unjust. But the Salamanticensians affirm it. Ibidem with Bonac. Medina, and Diana. Reason, because that price is now common and current; it has a contingent relationship, as having been derived through the injustice of others. At the first sentiment, it appears altogether more excellent to me, that always and (I understand) the price be beyond the supreme. Reason, because that price, obtained through injustice, is always and by itself unjust, and must be reduced to justice.

That, however, is to be called the least just estimation, which is discovered to be unjust and has arisen from injustice; nay, it ought not even to be termed an estimation, but rather a deception and fraud. Thus rightly "10." The seller ought to warn the buyer about any defect in the thing sold which might be present, for instance, if the horse is mad, the house ruinous, or the sheep diseased, v. g. lib. 108. III. Treatise.

V. Of the Seventh Commandment of the Decalogue. Burned food, etc., otherwise it is held to be fraud and damage: namely, if there has been a defect in substance or quantity, for example, if there is a deficiency in weight, or short measure, or if he has sold one thing instead of another: and thus a mortal sin remains with the obligation of restitution. 1. He who places the grain to be sold beforehand in a moist place, so that it may swell. 2. He who mixes Rhinish wine with French wine. 3.

Who sells calf flesh for kid flesh, etc., see verse 11. » But when a seller may justly remain silent regarding defects in the quality of the thing sold, without obligation to refund the price or rescind the contract, see Card. » Lugo, chapter 26, section 8, note 128. and 11. Where he notes that a sale made by an ignorant person renders the defect of the thing sold valid: yet

it is to be rescinded or reduced to equity, unless the seller has acted otherwise in this regard. Therefore, a triple fault can be present in the thing sold; I. concerning the Substance, as when tin is sold as silver.

II. circa Quantitatem, si dentur 5 modia pro 10. III. circa Qualitatem, ut si vendatur vinum corruptum, pannum adustum. 89 Et I. si vitium fuerit circa Substantiam, certè contratus est nullus, et venditor tenetur vel contractum rescindere (si alter vitio manifestato non emisset), vel saltem excessum pretii reddere. On the contrary, si emptor emat gemmam pro vitro, tenetur supplere pretium, saltem infimum, si ipse dolum non adhibuerit; Excipe, si uterque sorti se committant ob ignorantiam valoris, ut diximus n. 802 v. Note. 4. But there is doubt whether one would act licitly in knowingly purchasing silver from a seller who is unaware of its value, seeking to profit from what is worth more?

They absolutely deny this; rather, some hold that such a donation, since it proceeds from ignorance, is null. Thus. 8. tr. 3. c. 7. §. 11. n. 39. cum Salas, et n. 172. If the same holds true when the seller, out of ignorance, sells an item at a very low price, even though the seller did not inquire about the value of the thing from the buyer (for if he inquires, then certainly the buyer is bound to manifest the value), thus. Lugo D. 26. n. 137. et in fine. Reason, because then, through ignorance, the seller easily accepts a low price.

It receives. But I do not know why such an opinion should be accepted; I do not deny that, according to the reason of this donation, the purchaser cannot retain anything, because it is not a true donation, whatever Cajetan may say. Why then does such a contract not have the force of a true sale? For on one side the buyer justly buys by paying the lowest price; but on the other side I cannot understand how he himself has obligation to inquire from the seller (whether the seller interrogates him or not) about the value of the thing, when in no way does he positively deceive or induce him to sell: yet that the seller accidentally considers that price to be the lowest, is his own fault and should be imputed to him. Si vero res mixta venditur ut pura, dum vere sit res perfectior aliis, et post mixtionem aliis non sit deterior, probabiliter vendi potest, vitio non manifestato, pretio communi, et consentit P. N. 30 cum sententia ferè communis, ut asserit; modo, facta mixtione, meret vere adaequet alias, quae communiter venduntur. But there is doubt whether the same can be said of mixed wine with water?

They deny that this can be admitted, as truly it is admitted by n. 83. with Lop. and others, as will be shown below. And it sufficiently appears probable, unless from the mixture the wine should ignite, or should be

unable to be preserved by the purchaser who bought it with intent to keep it, as Serra 2. 2 q. 77 a. 2 says with Soto and Conrado, Jo. de la Crux; and at least in this respect there does not seem to be any serious injustice. That is confirmed by 8. Antoninus dicens: Cum aliqui sophisticant ea, quæ vendunt, ut se servent indemnes, et cum aliquo lucro congruo; quid, si venderent puras res? Emptores non vel lent dare justum pretium; quid alià vendunt alia sic mixta minori pretio; videntur posse excusari dummodo non 110 Lib. III.

Treatise. V. Concerning the Seventh Commandment of the Decalogue: let mixtures that are harmful to bodies be made in those things which are sold for food and drink, and especially in medicines. P. 2 tit. 1 c. 17 §. 4. This is confirmed also by St. Thomas, who says: When the use of the thing is fitting for commerce, if the seller, on account of such a defect, deducts what ought to be deducted from the price, he is not bound to make manifest the defect. II-II q. 77 a. 2. Doubt is cast whether it is injustice to sell something for its equivalent, or nearly equivalent, benefit, as pharmacists often do, when what is handed over is equally, or nearly equally, useful?

They probably deny that, moreover, if just price is demanded for the thing delivered, this constitutes injustice. Reason, because then there is not present a substantial diversity with regard to the end of the buyer. However, rightly he observes . 822 H. If the defect is near the quantity, it is inquired whether he who uses a diminished measure excuses himself by obtaining a just price, as follows: that he would not have obtained it otherwise through an unjust tax or through unjust monopoly? Very probably affirm Lugo D. 26 n. 125. . 3 tr. 4 c. 17 § 2 n. 15. . 5 p. 22 n. 5. Reason, because then this man justly redeems his vexation. 823 III.

If finally the vice is about Quality, when it is self-evident, the seller is not bound to manifest that, as S. Th. 2-2 q. 77 a. 3 with the common. They rightly note, however, that if it be known to the vendor that the purchaser is ignorant, he is bound in conscience either to manifest the defect or to compensate for the damage; although, indeed (as Tamburini says there), the contract is valid; unless Lesus, in book 1, chapter 17, note 33, allows that the thing may still be intact. It is also excused if quality has passed into substance, for instance, if the buyer explicitly said, "I do not want the wine if it is not old," and the seller, deceitfully inducing the buyer regarding quality, if the thing is not equitably his or nearly equally useful, is bound either to rescind the contract or to restore the damage at the discretion of the buyer; and the same is said by Habert 1. 4 p. 281. quas1. 3. When however an occult and harmful defect in the thing exists for the purchaser; as when a horse is furious or a house ruinous, rightly does he

say this. It is also noted, article 2, section 5, note 3: when a thing has a certain defect, the seller is bound to make it manifest; otherwise the sale is null: but if he be asked generally, then, if the thing is useful for the purpose of the buyer, the sale is valid.

Wherefore it is noted in § 11 n. 29 that, if the vendor protests and says he will give no reason for any defect but sell as commonly said: "A sack full of rotten bones"; then he is bound to nothing. Under which he merited approval. Reason, because in order to avoid disputes for the common good this can be sufficiently honored by custom: Nevertheless, it must be understood that the thing should not be sold beyond its just price, at least the supreme price equivalent to its value, considering the measure of that hidden defect. « 11. If you know secretly that your debtor is not worthy, it seems unjust to those who do not know this, to sell that debt for a usual price; indeed, because there is deceit, and also because the intrinsic vice of the credit is not revealed. L. c. p. 10. 10.

Even though the seller knows that the price of the commodity is shortly to be reduced, nevertheless it is lawful for him to sell at the current price and not to say so (for this would involve deceit, fraud, and lies by which to allure the buyer to purchase); because the current price is still just, and Fill. etc. But there is doubt about this among the Doctors. For others, as . 107 denies that it is possible to sell at current price a thing which will be known shortly to be worth less, because then that thing will be worth less on account of such circumstances: And . 112 Lib., III. Treatise. V. On the Seventh Commandment of the Decalogue. This correctly. Page one, 448.

Psalm 108, with Wisdom and Theology: who in his second book, treatise seventy-seven, article three, ad four, explicitly teaches this, saying: A seller who sells a thing according to the price he finds, does not seem to act against justice if he does not expose what will be future. Reason, because the future value should not be considered, but the present one, which does not vary according to particular knowledge, but according to common estimation: And I consider this judgment more correct if there is true particular knowledge, not if there is only common knowledge. Thus likewise in opposition, they rightly say, P. 302 n. 20. Tourn. page 447 with. Ban.

Caj. Mald. et Item diceandum cum 303 n. 21 bene te posse emere pecunia, quam private scias brevi prohibendam; modo, semper intellige, absint mendacia, vis, aut fraus. Whether, however, in that case either the buyer or the seller would sin against charity by selling that thing to someone with such great damage incurred? Resp. Utrum autem emptor vel venditor peccent contra charitatem in illo casu, si quis vendiderit rem illam cum

tanto ejus damno. St. Thomas in the same place says: But if nevertheless he should subtract from the price, there would be a greater abundance of virtue.

But if it does not diminish, it regularly does not sin in counseling thus about its affairs, even though an accidental loss befalls another: It is certain that one should not manifest a thing with his own damage, as 108 says etc. The reason is because from one aspect he does not harm charity by justly consulting his affairs according to his right, although another may accidentally suffer a loss thereby; from the other aspect he is not bound to manifest that knowledge with his own inconvenience, as they say in 2 c. 21 n. 40 and the same in cum Sol. Good. It has been said regularly, for it is permissible as charity commands that we subdue ourselves toward a heavily indigent neighbor, so also it forbids us, lest by ourselves we be reduced to poverty, in order that we may acquire riches for ourselves. It includes two; unless this were still the same quantity which he would have bought from others at the same price: But they rightly consider that this exception is not regularly valid. It likewise excipit; or if he could sell it to someone who would immediately resell it to others consuming it, and then sell it again to another person preserving it until the time of price diminution.

But in all these cases, if the seller always grievously harmed charity, I doubt it, provided that the reason cited by the same authors is attended to; namely: that charity does not prohibit one from consulting his own interest according to his right, even though another may incidentally incur damage. « 13. If to someone something is given to be sold for a certain price, whether low or moderate, and he sells it rigorously, it is probable, as stated in Ang. v. emptio, that the excess not be restored but may be retained, since by his own industry he has acquired it. Yet another matter is concerning families of merchants, which are delivered to them at an undetermined price, and should be sold in a more advantageous manner, so far as they can, for the lord's utility: cf. V. 18 C. Lugo d. 29 §. 9. » It is asked, whether when a thing is delivered to you for sale at a designated price, you can retain that which exceeds from the thing itself? It is certain that you cannot retain anything, if you be a hired servant of the lord's thing, whether you are led to sell it by a designated price.

Otherwise, there are two opinions: The first, which Businius holds, as stated shortly above with Anglicus and is deemed probable, in question 4, article 2, page 122, affirms that one can retain it if you sell beyond the designated price, because that excess is not of the thing itself, but rather a fruit of your own industry. The second opinion, however, is true, which they hold. 2 c. 21 n. 138. Lugo D. 26 n. 150. Sporer. 3 c. 7 §. 9 n. 10.

Tower l. 1 p. 473.

Third, 114th chapter. III. Treatise. V. Of the Seventh Commandment.

They indeed receive and agree with Croix, lib. 3, p. 2, n. 114: if the Lord has committed to sell in one place, and you, having exercised diligence there, sell much more in a place very distant. But rightly they deny it, Lugo, loc. cit., lib. v. Fourthly, for then you can retain only the price of your labor, and not the entire surplus that is drawn back from the thing itself, which always bears fruit for its lord. And the same thing I deem to be said (whatever they may say in that case, beyond the value of your labor, you cannot exact more from the Lord than you have laid out under His name; for you did not purchase anything with your own substance). But you will be able to retain the excess of the price of the thing sold in the following cases.

I. If through your industry the thing has been improved, and consequently you will sell it for more, as P. C. C. with Ratio concede, because, as is commonly taught by Mol. And others say with Croix in lib. 3, p. 2, n. 213: mixed fruits, namely those proceeding both from nature and industry, should not be restored to the lord by either the possessor of good or bad faith, except insofar as they respond to nature, but not insofar as they respond to industry; for those fruits are not of the thing itself, but of man, through the thing as an instrument bringing profit to him. II. Dicunt et alii cum Croix' l. 3 p. 2 n. 213., fructus mixti, scilicet provenientes tam ex natura rei quam ex industria, non debent restitui domino à possessore tam bonæ quàm malæ fidei, nisi in quantùm respondeant naturae, non vero in quantùm respondeant industriae: fructus enim illi non sunt rei, sed hominis, occasione rei, vel per rem tamquam instrumentum sibi lucrantis. If you tacitly agree with the lord, nothing is due to him beyond the designated price; thus Lugum with Poll. Salas, III.

If the profit is of little moment, as the laws and codes say, then it is easily presumed that the lord consents for you to retain that small profit. IV. If you, with due diligence and finding no greater price, buy a thing for yourself, and later sell it for more, you will restore to the lord only that which is assigned to him. Thus it is. Fifthly, Lessius, c. 21 n. 139. . c. et cum ; si tunc poteris rei tibi emere, et postea eam vendere illi alteri pretio majori, dummodo postea, adhibita diligentia ordinaria, non invenisses occasionem rei emendae, nisi illo majori pretio.

And it is added by Lugo n. 152., then to be reckoned as what you wished to acquire for yourself; or to sell whenever you have had the intention of retaining the excess for yourself and at the same time assuming the risk of

the thing, if perchance it should perish. Nevertheless, Lugo well observed that it is not permissible for clerics, to whom commerce is forbidden, to purchase with this intention, that they may subsequently sell the item at a higher price after it has not been altered, if by chance no opportunity to repair the item had arisen at the earlier, greater price; just as if you had offered yourself gratuitously for sale or purchase. They say that nothing can hold you back. D. 363. And yet they say: that you may retain the price of your labor, if you did not have the intention of giving; for indeed you were false and unfaithful, but not unjust, since your labor was already worthy of a price. And this seems more probable to me, provided that the Lord had already previously determined to sell that thing, and moreover another person was not present who would have sold the thing to the Lord for free. « 14.

When cloth is sold to tailors who deny it for less than those with whom garments are made, and this happens because they are parochial merchants or frequently buy from them, they can retain a part of the price as a concession, provided that others act faithfully, since no one suffers an injury; and when much concern lies with the merchants, so that such matters come more to their than to other concerns, it is reckoned as a favor done to them and given to them that part. Salas nevertheless denies this, because merchants falsely claim to be remitted, in order to allure. Therefore, cautiously, as the Commentator rightly advises. You will gather that it must be permitted to weavers who declare they are selling cloth according to the law. III.

Treatise. V. Regarding the Seventh Commandment of the Decalogue for others, to retain something of value; for sometimes merchants really prefer to pretend to give a gift rather than actually do so, such that if the Lord Himself were to go there, He would obtain the same thing for the same price. Moreover; si the tailor faithfully conducts the business of the lord and the merchant gives him something truly gratis because he frequents his workshop, or to attract him to frequent his own workshop, the tailor lawfully could retain the gift, provided that he uses due diligence in purchasing from other merchants at a lesser price; as stated in Tourn. l.c. with Bus. shortly above, and : 2 n. 76. with Fill. ibid., nothing can be demanded by tailors for profit which ceases when they cease working, the reason being that the lord himself offers to go and buy clothes; this is to be understood if otherwise there were not another who would freely purchase for the dominion, as we said shortly above number ante in fin. §27 « 15. When a thing has been sold to two persons in commonalty, he acquires dominion who receives it, provided that he pays the price.

If to neither has it been delivered, what is owed to him who has previously

purchased, the other having an action against the seller. If nevertheless anything is sold or given to ecclesiastical keys or other pious places, dominion is acquired before the act of delivery. See: Lugo d. 26 sect. 9. If therefore a thing is sold to one person and subsequently transferred to the second purchaser, it belongs to this latter. Consider, unless the second purchaser is conscious of the prior sale; Thus 2 c. 19 n. 142. with Gloss: in c. Si tibi de Praeb. in 6.

Pi. . 14 n. 10. with common consent; And this even if this second purchaser is a privileged person, as in ibid.; For then this thing must be delivered to the first purchaser: but not before the sentence, unless perhaps he himself induced the seller to sell it again to him, as and Tourn.: u. c. Excipe 2. if the first purchaser is privileged; nevertheless locus pius, or Universitas; Tourn.: p. 455. Conc. p. 267 n. 4 et Excipe 3. si res secundo sit tradita titulo gratioso; nam hic debet rem sibi traditam restituere emptori, qui jus habet ad rem, ex l. Ignoti C. de 1. D. Qua in fraud. Thus. loc. cit. " 16.

If the thing perish before the transfer [of ownership], and it is certain and defined, for example, this house, this jar, perishes for the purchaser, unless otherwise expressly agreed upon, or the fault of the seller causes its destruction. If however the thing is indeterminate (for example, if someone buys 10 modios of ground grain from a granary or sheep from a flock), or even if he purchases a determinate thing but in a quantified manner (such as all the wheat into separate measures with one reaping), then before the transfer of the thing or its measurement danger regards the seller. See. 12 loc. cit. Card. Lugo, d. sectio 14 n. 216. . 3 t. » 4 c. 17 §. 2. * (Excipe, si emplor sit in mora, ne res sit dimensa, ex l.

Reader D. concerning Peric. Note nevertheless, that both increase and decrease in eminence regard the buyer by reason of the same imperfection. Body » c. 2 n. 13 cum » r7. If the thing sold perish or deteriorate after the transfer of ownership, the buyer loses it; although the price has not yet been paid, because the thing belongs to the Lord, cc. Quæres 1., an, and how it may be lawful to purchase either handwritten documents or credits belonging to another? 3 q. 3 p. 10. ex Mol.

Because something is received above the limit from a loan; for by lending one implicitly gives a smaller amount for a greater need. I have spoken with certainty, because if the things believed are uncertain, perilous, and contentious, then for the sake of avoiding such difficulty, it is licit for one who is not the cause of this difficulty to pay a lesser amount, insofar as either the uncertainty or the doubtfulness of the solution is less, or greater. III. Treatise. V.

Of the Seventh Commandment of the Decalogue. "when such a danger and difficulty are less powerful, l. 7 c. 20 d. 8." » An uncertain or difficult-to-collect debt can licitly be purchased at a lesser price, even though it might easily be fully demanded: because the price is taken from common estimation, not from the particular circumstances of the demander, as stated in S. Th. 2. 2q. 77 art. i. 2 c. 21 n. 78. Lugo, d. 25, n. 84. Bon. . But in doubt it is recalled whether a clear credit can lawfully be purchased at a lesser price than the lowest?

The first opinion affirms what Cajetan holds. Usury, Arm. eod. v. n. 33. . l. i c. 7 d. 17. . 5 c. 31 in fin Auctor in Add. ad 8 tr. 3 c. 7 § 8 n. 3 cum Dic. et probabilem putant Lug. D. 26 n. 95 adheres and affirms chapter 7, question 5, article 10. In this, when 34. Diana, I., tractatus VIII, respondens IV, caput IX, cum Summa Theologiae, Maldec.

Philarcho et Serra apud librum secundum caput vigesimum unus nomen habentem sexaginta sex sic doctum cardinalem Bellarminum de Loyanna. Reason, because this contract is not one of loan but of purchase, since it is not money that is bought, but an action towards that; and therefore the price is deemed just which commonly businessmen pay for such chirographs. The second opinion denies this, and that is what St. [author] says in l. 2 c. 21 n. 67. Lugo D. 26 n. 96. 3 p. 2 n. 984. Laym l. 3 tr. 4 c. 17 § 5 n. 33. q. 2 art. 2 n. 8.

Reason, because an action directed toward a liquidated debt truly, since there is no risk or expense involved in recovering it, has the same value as the very debt owed; hence, purchasing such an action with less than its worth through anticipatory solution, when no inconvenience intervenes, constitutes virtual usury. This opinion is indeed advisable as being more common and safer; but I would not dare to reject first that of Azor and Laym., both on account of the authority of DD., and on account of reason, since they have condemned it so boldly that no usurious spirit should remain in me; for natural things do not possess a price, but are valued as much by men as they are estimated to be, according to Petrocor. tom. 2 p. 348. Prices of 62 D. to the limit. Falc. apud Cabass. It is evident, he says.

Whereupon the same Lugo, loc. cit. Article 99. Cross, and for this reason it does not seem improbable that the price itself would decrease according to the common estimation of men and thus be capable of being purchased at a lesser cost. Another reason is that of a loan, another of purchase; for from a loan nothing can be demanded besides chance, unless an extrinsic title be added; whereas in purchase alone the estimation of men constitutes just price, and here it gives a title to being purchased at a lesser

cost. « i. They commit usury. i.

Ministers of Kings, Princes, etc., who, in order to make the solution anticipatory, receive something from creditors, 2. Who receive something from debtors on account of a granted delay for payment; because they receive something beyond the scope of the virtual loan, Mol. Minors can regularly incur debts and stipends, or salaries due to soldiers, or to families of nobles, because they have attendant inconveniences, perils, and molestations in demanding them; for this reason it is likewise permitted, even if those debts were to be paid at the present time, or even in the past. etc. 3. If himself is the cause of difficult solution, he sins against justice by remitting a smaller debt, and is bound to restitution: because himself is the cause of damage, according to 120 Lib. III.

Treatise. V. Of the Seventh Commandment. Decal. Let the debt be considered less on account of his own fault; for he who would report a reward from his own offense. * (This is certain among all, v.) * Mol.

» d. 3 i 3. Hence the Treasurers of the Principal, to whom the solution pertains, when themselves are the cause of difficulty and malign solution, cannot purchase chirographs or credits of lesser amount, as it is taught in the aforementioned place not to be permissible for treasurers, etc., whose duty it is to resolve major debts; rather they should resolve one debt before another, unless perhaps someone has some right prior to others: See above regarding order of restitution. But to hold all liable proportionately, Bon. l.c. See c. d. 10. ARTICLE II. What is a negotiation, and by whom illicitly forbidden? When will a negotiation for clerics be gravely illicit? What if a cleric negotiates through another? What if it is negotiated under a false name? And see there established by the Bull of Benedict XIV. Is it permissible for a cleric or a religious to buy animals in order to sell them dressed in their pastures? Is it permissible to buy cattle to dress them from alien pastures? Is it permissible to buy a field with its fruits?

Is it permissible to sell at a higher price, so as to buy at a lower price? Is it permissible to buy wool for the purpose of selling cloth? Is it lawful for a cleric absolutely to engage in commerce out of necessity for himself or his family? At some time is it illicit for laics to engage in negotiation? Is it permissible for Clerics to engage in business transactions or secular procurations? 831 » Resp. This is when one acquires a thing with intent, so that it may be intact and unaltered * (according to how it is better altered. S. Thom. 2. 2 q. 77 ar. 4 ad 1) *, » he will gain more by selling or exchanging it.

Which is prohibited with severe severity to those constituted in Sacred

Orders (constitutis in Sacris), because it is obnoxious to the danger of many sins and very distracting and indecent for the Clerical office, thus leading to loss of profit. * (Constitutis in Sacris only, as stated by Lugo, D. 26 n. 25. That is not appropriate. Lugo, however, justly doubts about this, because novices do not come in hatred of the odium of religious names); thus they may sin mortally (As the common opinion has it (but not against justice). And they incur suspension and excommunication; yet a sentence to be endured. As regards the immunity of gabella, see c.) if they give much attention to business, as is said in loco citato d. 1, l. 3, t. 4, c. 17, § 7. Bonaventura contra Dionysium d. 3 q. 1 p. 5 C. Lugdunensis d. 26 s. 3 n. 19. Therefore, is the common sentiment that it should not be prohibited for clerics of lower rank to engage in commerce.

Thus 1 p. 467 n. 1. Lugo D. 26 n. 25 et . 14 c. 4 n. 37. It is doubted, whether Benefices are forbidden to those in minor orders? They deny Mol. D. 342 et l.c., qui hoc probabile putant cum 36 c. 1 q. 8 n. 20.

But it is better to hold the opposite with common consent than what Lugo holds in D. 36 n. 26 cc., and also in Sa, Tap. 21 q. 3 where negotiation is prohibited not only for Presbyters and Deacons but also for Clerics: which at least should be understood of Beneficiaries in Minor Orders; it cannot be understood of Subdeacons, since in the third century, when the Council of Carthage III was concluded, whose Canon is the aforementioned one, the Order of Subdeacon had not yet been numbered among sacred orders; for up to the time of Urban II (who lived in the year 1031) only the Orders of Presbyter and Deacon were considered sacred, as is evident from the Ratio. And why negotiation with Benefices is forbidden, this is because Beneficiaries by their office ought to be devoted to God, being dedicated to the ministerial service of the Church; then because, according to Lugo's assertion in the Bulls of the Pontiffs, Beneficiaries, not only in Major Orders but also in Minor Orders, are stripped 122 Lib. III. Tract. V. Of the Seventh Commandment of the Decalogue: goods acquired through commerce; therefore, commerce is likewise forbidden to those [who have them].

The contrary opinion, however, is strenuously supported by some valid reason. "If a cleric once, and again merely engages in commerce," for light matters, such as books, crosses, etc., buys them, "so as secretly to resell them at a higher price, it is not a mortal sin." It is said in the same place: "The cleric does not gravely sin twice, whether by engaging in a non-repugnant trade nor in a great quantity, because the laws speak of him who engages." Thus. 2 c. 21 n. 4. Lugo d. 26 n. 24. Hence, even if once he engages in a serious matter through business that is not dishonorable nor involving great quantity, it probably does not constitute grave sin,

according to 3. p. 2. n. 1003. But Caj.

Michael de Palao and ibidem say that it is not grievous to frequently engage in business transactions when they are made without scandal, and the transaction is not dishonorable, provided that a warning precede; but: such a warning is required only so that one incurs punishment, not in order for this kind of exercise to be illicit, since that is interdicted by law as inherently demeaning to the clerical state. 832 Note here from the Bull of Benedict. XIV. Contra Clericorum negotiationem edita Romae 25 quod si non possint dimitti sine detrimento permittur continuatio sed tantùm ad tempus et per interpositam Laici personam ac de licentia S. C. Concilii (aut Ordinarii si sit extra Italiam); alias incurrit Clericus eandem Spolii poenam. Plures autem AA. dicunt: non peccare graviter Clericos qui per alios negotiantur dantibus ipsis pecuniam aliis ponentibus industria nisi eorum superintendentia esset tanta ut ipsimet negotiari viderentur ita 3 p. 2 n. 1009. But today the opposite must be entirely held according to the Bull of Benedict XIV. Apostolicae, editae Romæ 25 Febr. ann. MDCCXLI, ubi statuitur: poenas, quas inficiunt adversus clericos illicitos negotiantes, extendi etiam ad clericos illicite (verba Bullae) sub alieno nomine laici quomodolibet negotientes, perinde ac si ipsi seipsos negotium illud ipsum illicita exercerent pro suo nomine. Which is understood (as Benedict himself clarified more clearly in the Synod, volume 2, book 9, chapter 6, notes 4 and 5) to refer to clerics who engage in business transactions through laypeople, seeking profit for themselves.

That it must be understood in this way is also evident from the same Bull, where the Pontiff immediately after the aforementioned words declares that goods thus acquired by Clerics under a layman's name are subject to the penalty of spoliation. Moreover, from the Bull Regnante Clemente XIII. When first given, on the twenty-seventh day, if outside Italy. Furthermore, it is added that if there is any doubt about a contract of negotiation, whether it is expedient to initiate it licitly by a cleric or not, the most appropriate way is to write to the Sacred Congregation of the Council, which will decide on the doubt. « 2. It is not prohibited for Ecclesiastical or Religious negotiations if they sell sheep which have been raised and nurtured in their pastures, because they sell the fruits of their herds or fields, Mol. Lugo sectio 3 n. 29.

If they shear flocks as if they were sheep, selling their wool, milk, and lambs, C. Lugo l.c. Ubi tamen negant licere iis conducere agros ut fructus vendant, eo quod (licet non sit negotiatoi propriè dicta) specialiter illis sit prohibitum in Concil. Carthag. 2 l. c. 124 Lib. III. Treatise. V. It is certain that it is not lawful for clerics or religious to use alien fields to produce fruits for sale.

Accordingly, as Bus. states above in Lugo de Contr. D. 26 n. 29. . 2 c. 21 n. 6. . de 4 R. 2 etc., Ratio, quia (ut dixit non caus. 21 qu. 3 ubi sic dicitur: Pervenit in S. Synodum, quia de eis in Clero connumerantur, qui-dem propter gratiam turpis lucri alienarum possessionum conduciones et causas seculares suscipiunt; et seipsos à ministeriis sanctis per desidiam separant; ad domos autem secularium concurrent, et substantiarum eorum gubernationes avaritiae causa suscipiunt. Therefore, the Holy Synod decreed henceforth that no one from their number, whether cleric or monk, should conduct possessions, nor mix with secular procurations. On the contrary, it is licit for a cleric to buy a field with its already mature fruits and sell those, because then he sells the fruits of his own field. Thus Fill. and Bus. as shall be found below.

It is also lawful to buy colts in order to sell them later after they have been broken in, says 16 D. 4 p. 13 § 3 n. 3. with Gutt. and Lassarte; But this does not much please me. But is it permissible for a cleric to purchase sheep or pigs, so that he may sell them dressed, or derive profit from their young, milk, and wool? Commonly they admit this, the Doctors say, if animals are fattened or milked in one's own estates, etc., c. n. 6. Lugo n. 29. . c. R. 1. But there is doubt whether it is permissible to rear or tend animals in their own fields for sale later?

If for this purpose alien lands are brought about, I entirely hold that it is not permissible, according to the cited Council. Chalcedon (unless a contrary custom prevails elsewhere). The reason is that, if there be a prohibition against leading fields thither to sell their produce, all the more does it seem that this is forbidden for animals destined for slaughter. Whether, however, it be permissible for a cleric to purchase fruits from alien fields for animals to be fed and then sold as food? In general terms, they concede that. But they deny it, namely, chapter 6, canon 5, note 102.

However, I am unable to understand why this is absolutely illicit, since on one side this is not a transaction; for purchasing an item so that it may be improved and then sold more dearly is certainly not engaging in a transaction, but rather receiving the reward of one's labor, as D. ad 1 teaches along with others. From another aspect, in no canon is this forbidden found. The general rule is that whatever is not established by Law as prohibited is licit, as has been conclusively proven in lib. 1 n. 48. He says. But I respond, either it is per se degrading, or on account of scandal to others: That which is per se degrading cannot be called such; for if this were the case, even a cleric would degrade himself by eating meat in his own fields, which commonly the laws together with themselves « 3.

The cleric does not sin 1. If he buys an acre with its fruits already ripe and sells those; because he has garnered the fruits of his own field; Card. de Lugo l. cit. from Si id quod ad proprios usus emerat, postea, quia non indiget, vel mutato consilio, carius vendat, ibid. It must also be noted that, in order to prevent clerics from engaging in commerce, it is required that they have a mind more inclined towards purchase so that what is sold may fetch a higher price; hence it is permissible for them to sell at a higher price so that they may buy more cheaply. Similarly, it is not forbidden to clerics or monks to acquire something with the intention of later selling it if its value increases, provided that this is done in order to obtain a similar item less expensively, because such a transaction does not properly belong to merchants but rather to economists or politicians who have the task of providing for the household or city regarding necessary goods for life. Neither is it prohibited for them to purchase more for the security of their provision; and what is always licit, namely to sell carius, is also permitted, because they buy that provision may not fail, as Lugo says, D. 26 n. 32. Mazzotti. tom. 2 p. 128.

It is also licit for clerics to purchase iron for selling swords: colors for selling paintings: wool for selling bread; provided always that they themselves bake the bread from the flour, and do not 126 Lib. III. Treatise. V. From the Seventh Commandment of the Decalogue, because otherwise this would greatly lead to commerce; thus Lugo n. 34. and Malder.

And they affirm this, even though it was their own wool; yet Lugo doubts about this. Whether it is permissible to lead horses there for placement? He still denies Mol., but Lugo concedes this, and asks: "But is it permissible for clerics to engage others than their own servants in trade, especially in necessity?" V. C. "from Lugo, d. 26, s. 4, n. 36; c. d. 19; one law, book 1, chapter 40, article 1."

The common opinion holds that it is permissible for a cleric to engage in commerce for his own or his relatives' necessary sustenance. Thus 2 c. 21 n. 6, Lugo D. 26. n. 37. and when it is said in the Common: Yet a just business must not be opposed on account of diverse necessities etc. But here there is doubt as to what necessity is required, whether of life or of status? Too rigidly; but more commonly and more probab ly, 4 p. 13 §. 3 n. 8. 6 c. 5 n. 102. Croix l. 3 p. 2 n. 1006 et Mazzot. de tum quia prohibitio, cum facta sit ob decentiam status, non censetur prohiberi id quod necessarium est ad decentem statum servandum suum vel suorum. It must be noted finally, that although negotiation is prohibited solely to clerics, it will nevertheless in some way be illicit for laics: namely, if one or a few merchants purchase necessary things in large quantity for food,

clothing, or common use of citizens before they have sufficiently provided for themselves with regard to these things, so that they might subsequently sell them at a price greater than would be according to the market estimation.

Thus Sot. But it is not improbable to say that these men would rather sin against charity and against legal justice than against commutative justice; because they do not sin by altering [their goods], nor by not selling immediately them, since no one is bound to sell his own property. However, he objects but see the aforementioned n. 815. They admit, however, n. 44, that merchants may sell goods at a higher price if they purchase them before transporting them to the city. Just as they also admit that a rich man may in urgent necessity of the citizens purchase grain, so that he may sell it again with moderate profit and thus provide for their necessities. It is very pertinent to inquire at this final point whether it is permissible for Clerics to engage in commerce or the management of the affairs of Seculars.

It is certain that it is illicit for clerics to exercise the office of Tutor, Curator, or Procurator of minors; likewise for that of Notary, and any other public office by virtue of which they are bound to render accounts either of justice or of goods administered. And for this reason such clerics become irregulars according to c. un. de Obligatione ad t. 4. p. 463. cum Deiudè advertunt . 63. cum cum . Commonly however, the Doctors teach that administrators of the property of the pious, or widow, or indigent pupillus, who have undertaken such a burden out of a motive of piety, can properly and even before accounts are rendered, ordain and administer. Argumento ex c. 128 Lib. III. Treatise.

V. On the Seventh Commandment of the Decalogue. That clerics may not, from a clearer source than c, pervert, 1. Can. 21. q. 3. acc. Indicated 5. question 39.

We come to the sought-after permission; commonly taught. 2. c. 21. n. 6. D. 6. p. 13. n. 8. Good. Same. Title page, paragraph 4, number 4. Sabn. eod. tit. c.: q. n. 28. cum. et aliis, illicitum esse. To clerics, managing a private secular person's procurations is not to be pitied, when there is an obligation to render accounts, as it is stated in c. Sed nec 4. Let no cleric or monk presume to exercise the procurations of villages, as if even secular legal disputes were involved.... Let no one among the clerics dare to do this.

If however anyone shall attempt to oppose these things, because he says against the doctrine of the Apostle (Titus 2): No soldier of God engages

himself with secular affairs; let him who is separated from the ministerial office of the Church be alienated for this reason, because through neglect of the clerical office he may be immersed in the fluctuations of the world to please the powers that be. From the aforementioned text is inferred 1. that a cleric should run from such suspension from Office, but rather endure the sententia, by which ignorance may be excused, even if it be gross: for there has been placed the word praesumat in the said place, which imports convenient contumacy through knowledge of censure, as we say 1. 7. n. 47. is inferred 2. that in practice 5. a cleric should seriously be reproved in this matter, who so immerges himself in such procurations, that he is compelled to neglect his ministerial duties, according to the words of the text alluded to, office clericali neglecto, fluctibus seculi. Hence I would not dare to condemn as mortal a cleric who would not neglect his ministries on account of such a procuration: Especially if he did not do so for the cause of avarice, but rather for the purpose of maintaining a more decent state and the preservation of his family. ## DUBIUM IX. What is a Contractus Censūs, and whether it is permissible? 839 When is census permissible? 840 Is it permissible to include persons in a census? 841 Does the census perish when the thing censured perishes? 842 Is it permissible to append an assurance pact to the census? 843 Is the census redeemable on both sides? 844 And when is it permissible to revive the census? 845 What conditions are required in the Bull of Nicholas V? 846 What conditions are required in the Bull of Saint Pius V? Condition I.

That a census may be constituted over a stable thing and a designated one. II. That money may be counted. III. That a pre-conceived solution may not be agreed upon.

IV. That the creditor may not be obligated to fortuitous cases. 847 Dub. htc 1. If the thing ceases to exist, may the census be extinguished? Dub. 2. Is there a certain time lacking fruit, due be pension?

Dub. 3. If the specially designated thing perishes; let the other goods hypothecated remain obligated? Condition V. That the appraiser may not be deprived of the thing to sell. VI.

Lest an appointed census-taker be deprived of the thing alienated for a pension not dissolved. VII. Let no census be created from pensions that have not been dissolved. VIII. That the censor may not receive a reward again, and that the census-taker may be able to redeem.

IX. Ut non vendatur altis census majori vel minori pretio. 848 Whether the Bull of St. Pius obliges in conscience? 849 And whether it obliges; where there has not been acceptance? Response. It is, when a certain sum of

money, for example 83 florins to you, is bought from thee the right of perceiving annually out of thy goods, or some certain useful thing of thine, or some fruitful certain pension or census, for example annual 5 or 6 florins according to custom or law: so that this not be usury and loan, but true purchase and sale because it is bought not the pension itself, but only the right of perceiving it * (Thus n. 24) *, which is far less valuable; therefore it will be bought for a lesser price; although after many years the price may greatly exceed. Maleoli libri tertii primi quartus. c. 18. and the rest commonly.

However, more correctly C. Lugo d. 27, s. 2, n. 20, proves, in excusing the census from usury, to say that pensions were not bought, nor any right to those pensions, nor fruits, but rather a part of the usufruct of such property on which the census is constituted; so that the entire direct dominion over the property remains with the seller, while the useful dominion remains with the buyer. III. Treatise. V. Of the Seventh Commandment of the Decalogue.

or if the right of use and enjoyment is sold on one side: Hence the following cases arise, which can also be resolved according to the nature of emption and sale. » 1. This contract is unjust if the just price established by law or by a probable custom, as constituted in Germany by Charles V, is not observed, so that one may acquire rights to five only for the price of one hundred. 2. Hic contractus est injustus, si non servetur pretium justum à Lege, vel consuetudine probatum, quomodò pro Germania constituit Carolus V, ut jus ad 5 tantùm pro 100 ematur. Not only is a real census licit, that is to say constituted over some thing, as above stated, from whose utility a pension may be drawn, so that with that thing any one passes over an obligation and burden: but also (at least by reason of the nature of the thing, and apart from positive legal prohibition) personal, and immediately constituted over a person, which by its own operation and industry may yield some fruit, or have goods in prospect or actually possess them, whence a pension may be derived: otherwise the right which it would sell would not be estimable at any price, and thus the contract would be fictitious.

Thus probably Cov. . dub. 3. n. 2. etc. contra . C. Lug. d. 27. n. 25., ubi censum mere personatum illicitum esse docet, est probabilius et prolixè probat: an census personalis sit licitus de jure naturali? The first opinion denies it, and this is held by Lugo, D. 27, n. 25, with Mol. An census personalis sit licitus de jure naturali? Concina t. 7. p. 576. §. 3. cum Panorm. . Et l. seq.

C. de Actione et de Pignore. They prove 2 from Extrav. 1 and 2. Martini V.

et Callixti III., qui soli census reales approbàrunt; et clarius ex Bulla S. Pii V. in sua Extrav. de Censibus, qui expressè statuit censum super reimmobili, et non aliter, constitui posse. The second opinion, however, is more common and probable, teaching that it is permissible. Herein. Secondo capitolo. Ventidue. Dubio quarto.

Sot. l. 6, qu. 5, art. 1, concl. 4. 6 p. 11, n. 2. Abelly page 376. note 2. Merb. tom. 1. p. 354. q. un. p. 324. Cabass. lib. 6, cap. 12, n. 5, p. 540. Wigandt tr. 9.

Example 8. note 4. Reply 1. Item 4. R. 1. Anacl. eod. tit. dist. 3. q. 6. n. 78. et n. 26. cum Cov. Ban, Nicolai.

V. In his Extravagants on Censuses, where it seems clearly approved that censuses be taken over persons, as noted by . et Wig. ll. cc. These are the words of the Bull: Since, with due security and power of the seller, censuses may conveniently be contracted for their persons and properties, revenues, rights, etc., and all movable and immovable goods, obliging them and causing them to be obligated, etc. Gregory XIII has also confirmed this, as testified by Palaus and Wiganet. It is proven by reason, because if each one can place his works for hire, he can also sell them. In tale autem contrahente non proprie ematur persona, sed improprie; nam proprie ematur jus super industream personae. Just as in a real census, property is not purchased but the right to receive fruits from the property is purchased; so too in a personal census, a person is not purchased but the right to receive fruits from the labors and works of that person is purchased. Nor is it valid to say that such a contract is some kind of virtual loan; for in a loan one is compelled to return the same sort of thing, whereas in this capital census one makes a dead repayment, and only what is at the discretion of the seller can be returned.

Whether, however, it is lawful for a redeemable personal census to be redeemed from either side? See to be said in seq. n. 843. As for the Bulls of Martin V. and Callixtus III., it is responded that there was minimally disapproved of personal census there, but because only real censuses were being dealt with there, about which it had been inquired whether they were licit; hence, the Pontiffs approved them only on that account. Hence Cabass. l. c. et 33. with Prado, etc., do rightly say that the aforementioned Bulls are not to be considered obligatory, since they are not preceptive but merely approbative of the conditions expressed therein. In the Bull of St. Pius V it is indeed commanded that a census be established only upon a stable foundation, yet nevertheless it is not declared that a personal census is illicit according to natural law.

But rather, is this Bulla of St. Pius received everywhere? Below we shall see number 848. 3. Unjust are the sellers or assessors who obligate buyers or those subject to assessment to render from a thing incapable of yielding fruit at least as much as the pension stipulated. III.

Treatise. V Of the Seventh Commandment of the Decalogue. "go, or one who has already sold, but now reckons among others as having repaid." » 4. Just as in a purchase the thing perishes through the damage of the purchaser, so also in a real census, if the thing upon which the census has been imposed perish or its fruits be lost without the fault of the seller, then the census perishes, in such a way that I seek either the censualist not being able henceforth to receive any longer either the fruits or the census: because he who buys takes his own risk. Bon. l.c. *

Wherefore for this inconvenience the following mode has been devised as a remedy. 842. 5. It is licit to adjudge another pact of assurance to the census contract, so that if the thing on which the census is founded perishes, damage be incurred by the seller; and thereby he may either establish it over other goods of his own, or recompense him at the same price upon restitution. However, this pact must nevertheless be compensated to the vendor, either by increasing the price of the census, or by designating a lesser pension from what corresponds thereto, Bonac. l. c. n. 30. * (V. infra n. 847.

Dub. 2.) * 843. » 6. It is licit according to the nature of things not only an irredimable census but also a redeemable one, whether from one side or both sides, as is evident from the explanation of the terms: because an irredimable census is called such when the seller cannot redeem it at his own discretion; whereas a redeemable one is so called when he can, by giving the purchaser the same sum that he received, and thereby restoring to himself what he had sold before. It is said to be redimibilis on both sides, when it has been agreed in such a manner that both the buyer and the seller can dissolve the purchase and recover the sum given. . 10. R. 76. * (See the aforementioned regarding the pact of retrovendendi and reemendi supra n. 812 and 813.) 7.

Nevertheless, because a census contract redeemable from the part of the purchaser is a perilous thing, it should not easily be advised: for in the Constitutions. Martini V. et Cal-lixti III. PP. uti Caroli V. The contract and usurer are judged. But this must be understood according to the presumption of the external forum: besides the fact that those Constitutions have been received nowhere in so many places except where they prohibit things which are not adverse to natural law, as is noted in 3 t. 4 c. 18.

It is asked, whether it is lawful to impose a tax from either side? There is a double probable opinion. The first opinion denies this, which is held by Sot. l. 6 q. 5 a. 3 concl. 1 and Tap. The second opinion, however, affirms this, and it is held by 2 c. 22 d. 10. 3 tr. 4 c. 18 n. 8. 32 D. 6 p. 24 §. 4 n. 2. . likewise Val Sallas, Diana, and others. Saint Faustus says in the appendix.

This sentiment, considering the nature of the matter, appears to me sufficiently probable, provided that the limitations which I noted concerning the redemption pact (n. 8) are observed. For indeed, a reason for the disparity in the sale of lands and in this sale of tax-revenues cannot be assigned. However, gratuitously this is attributed to it being a virtual loan; since this contract entirely differs from a loan, for in a loan, if the thing pledged perishes, the lender suffers loss; whereas here: if the thing taxed perishes, the tax collector suffers loss. (See altogether what we said in note n. 813.) And they say that this holds not only for real taxation, but also for personal taxation; which is not improbable if due proportion is maintained. However, as the same Lay. and rightly observe. 8.

A census vitally, because it is a virtual promise, and is fortified by an accidental event, it is licit. * (And commonly 6. with S. Th. The price of this census of vitality is constituted according to the ratio of age and health: 3. q. 4 p. un. n. 18. et Cabass. l. 6 c. 12 n. 8. which states that, if the enumerator can extend up to the age of 60, he may annually demand ten gold coins for every hundred. But to this chapter two, number seventy-four, to which Croix adheres, book three, part two, page one hundred thirty-four, libellus. III. Treatise.

V. Of the Seventh Commandment of the Decalogue. n. 123 and they say that it is possible to demand one for seven or eight, which imports to about 12 or 14 per 100. And elsewhere (in Auctar. v. The Society of Officials says Les.

One must sometimes be able to demand up to 16 for every 100.) Here it is to be seen what conditions are required for a licit census constitution. According to natural law, as it is said in 2 c. 22 n. 74, two conditions are desired only: the first, that there be equality between the census and the price; the second, that agreements added beyond the nature of the census be justly compensated. According to canonical law, however, two Bulls are required, in which several conditions are assigned for the establishment of censues. The first is that which begins with Nicholas V. Solicitude, issued in the year 1452, for both Sicilies: In this, the census accustomed to be instituted in the aforementioned Kingdoms is approved, even with

agreements and penalties appended for security; provided that these conditions are observed, I.

That a census be specially constituted for certain matters, and generally reckoned among all goods. II. That there be a contract for repurchasing at the same price. III. That the pension to be paid should not exceed ten per hundred.

In hoc autem ait. 7 art. 3 n. 14. standum esse consuetudinem locorum. The Second Lateran Bull is posterior to that of St. Pius V, which begins In hac plures alias conditiones praescribuntur; Et I. That a census may be constituted over a stable and fruitful thing, and one designated: Hence personal censuses are excluded, even though they may be celebrated with a mortgage, and so more truly hold. Q. 4 a. 3 n. 4 et . c. 4 n. 41. contrà . ap. . Res autem stabilis reputatur domus, ager et etiam officium perpetuum, et census perpetuus irredimibilis, unìamet redimibilis, ut contrà Mol. et Az. probabiliter tenent Bon c. Notat tamen pereunte re specialiter hypothecatâ. See the next note, number 847.

II. That the census of meat enumerated in money be declared before the Notary and witnesses. But here this question arises: whether this condition does not obligate in the internal forum such that it is permissible to constitute a census with antecedently due money in conscience? They affirm. 2 c. 22 n. 80. Nav, de cum Magala, Mald.

Val. de Contr. lib. 9 tract. 2 cap. 6 §. 2 n. 4. But it denies 33 Digest 5, p. 16, n. 8, with Med Lop et al., and also Mol. D. 3 go. Lugo D. 27 n. 83. with Salon. Reb. et aliis pluribus.

Reason, because although the Bull has been rightly constituted to avoid frauds, if in some particular case there ceases to be a fraud or injustice, nevertheless its danger does not cease. This very second opinion is more probable, but the first does not seem entirely improbable in a case where fraud or injustice would absolutely be absent in any particular case: For although it is more probable that the Law does not cease when the end of the Law ceases in a particular case, yet the contrary still seems probable according to Cajetan. Sylv. Eng. and others in many places, as we said in the first book note 190. If, however (speaking in our case), the sale of a fruitful thing by means of credited money is certainly valid and just, why should the sale of a real census be considered unjust, which undoubtedly is true condition, since the right to the fruits of the land is sold, in which the census is constituted, as rightly adjudged by Lugo, loc. cit., n. 80.

Salas, ut demonstretur quod census constitutus ex pecunia creditata minime sit illicitus jure naturali. Here it is asked 2nd: whether, if the vendor be damaged in the price, he can diminish the pension, or whether he is bound to pay the full amount and the censor is bound to make up the difference in price? Both seem probable. See no. 5. III.

That the release of the pension may not be made prematurely or brought about in such a way as to be included in the contract. However, Bonaventure says probably by way of contrast. Doctor tertium, quaestio quarta, punctum unicum, numerus vigesimus sextus, cum Mol. D. 3 go. Fill.

Reb. Salas, Book 136, Chapter 1. III. Treatise. V.

On the Seventh Commandment of the Decalogue, as correctly stated, Article 4, Note 6, and Bonaventure, loc. cit., Note 35, with Reb. Sala and others, contra Rob. Understand that unless for this reason the burden is diminished, the reward is reduced. IV. Let not the appraiser be obligated to cases of fortuity; Hence, if a hypothecated thing perishes, the Censitor may not demand that another be substituted, just as if a found thing were alienated; or if it is returned unfruitful by reason of culpability, let it not be reckoned against the appraiser. But there is doubt whether, upon the thing's destruction, the census itself perishes according to natural law?

The first opinion denies this, and this view is held by them. D. 6. p. 31. n. 3. with Sot. c. 4. n. 48. with Salas, Mercad. The reason for this is that in the census primarily an obligation is imposed on the person, and secondarily on the thing, which is obligated only hypothecarily, or as security for payment of a pension; Hence they assert that, when the mortgaged thing ceases to exist, the personal obligation of the census does not cease. But venerable so many DD. auctoritative, to me it seems altogether to be held the secondary intentions, which they hold . 2. c. 22. n. 34. Lugo, Decretum, lib. 27, nota 103, quaestio 5, caput 39, nota 4.

Mol. D. 383. et 394. dub. 3. . 3. tr. 4. c. 15. n. 4. P. P. 594. n. 4. 5. item Val. Reb. Medium n. 2 et apod. n. 47.

The reason seems to me most compelling, because in a real census, the pension is not constituted over the person, but over the thing; whose fruit right is sold; whence Lessius rightly says that the foolish and covetous are deceived when they say that only the thing is obligated there for the security of a personal debt; For indeed it is not the thing that is obligated in a census to secure the payment of the pension, but the right to receive

the fruits from the enumerated thing is sold: Hence, just as if the thing were destroyed, you lose the right of servitude which you had over it, such as passing through, gathering glands, etc. Likewise, you also lose the right to receive the fruits by contract of census acquired; and in that case the seller is released from all obligation. Thus; yet himself admits it and Consentient 4. c. 6. n. 14. et §. 3. n. 1. acknowledge that an added pact for solvendo pensionem may still be sustained after the real thing perishes, provided that the contract of census is supplemented by another contract of assurance, so long as that pension is proportionately moderated. But I cannot assent to this opinion; for although I consider the judgment of Lugo and others probable, as I shall soon say, v. seq. It is doubted 2nd, whether it is permissible to demand an entire pension under a pact, even if the fund has not yielded fruits for several years, provided that the price be diminished, because through that pact virtual compensation is made for lesser pensions to be paid in sterile years, when pensions which should have been paid for fertile years are relaxed; and thus equality already comes about. However, in our case, when a contract is laid down for paying pensions, even if it fails, no equality can be, since the pensions to be paid remain indefinitely; for the earlier fruits, relaxed by any relaxation made, cannot be equated with pensions which are to be paid perpetually.

It is doubted whether, if the property does not yield fruit for certain years, according to the Bull, an integral pension should be due? They deny that according to canon 2, c. 22, n. 82, and D. 30g.o., from this Bull of S. Pii, where conditions directly or indirectly obligating to a pension in cases of fortune are prohibited for him who is not otherwise bound by the nature of the contract. But they probably affirm Lugo D. 27. n. 71. with Sot. Sa, Bonifacius, et cetera, n. 7: Modò compensetur pretio periculum, quod venditor in se suscipit. Reason, because it is licit to adjudge alongside a real contract of census another contract of insurance, which in such a case is virtually deemed appositely joined.

The contract of this assurance, however, does not seem to be at all condemned by the Bull, for the Pontiff there prohibits only contracts that are beyond the nature of the contract being celebrated. Although indeed in such a contract the agreement to pay a pension, even in the case where the thing does not bear fruit, is not according to the nature of a censual contract, it is nevertheless according to the nature of another contract added by assurance, as will be said below concerning the Contract, that if the part of the property has become unfruitful forever, 158 Lib. III. Treatise. V.

Regarding the Seventh Commandment of the Decalogue, then a full pension is not due, even if the remaining part yields sufficient fruits for the

pension. But it seems more probable to me that what was decreed in a certain Decision of the Roman Rota (which Lugo refers to in n. 105; and this does not deny that it is probable), namely, that the entire pension should be due from the remaining portion of the property, unless its fruits are insufficient for the pension, and thus it holds. R. 5. with Duard. It is doubted 3. An, cessante re specialiter designata, permaneant obligata alia bona venditoris in contrahente generaliter hypothecata secundum ius naturale?

It is affirmed in Haberi t. 4 p. 324 vers. True, and it seems that the cited Bull of Nicholas V favors this, where it is granted that a census can be constituted over a specific thing, and generally over all other goods of the vendor. But it seems more probable to me that it should be denied, according to the Decretals, lib. 12, qu. 5, cap. 5, et P. Quia: for when the whole thing perishes, the whole census is lost, according to what was said above concerning the Decretals, lib. 1. It does not prevent that in such a contract all the goods of the vendor are accustomed to be substituted: For this caution is effective solely for securing a safe foundation against eviction, as Concina well says, namely if he is burdened with other estates or fiduciary appointments, etc. But not that, if the estate perishes, the assessment remains over and above other goods. And thus, too, Az. understands the Bull c. 1 q. 4 R. 1, namely that for constituting a census it is sufficient to designate a field, or several fields in some road or village, but not necessary to designate any particular field individually; and the Roman Rota has confirmed this repeatedly from the Clericato in Decision.

V. That the census-taker may not be deprived of the ability to sell or give something in possession. However, this person must nevertheless notify the assessor if he wishes to sell; should the assessor himself wish to purchase at that same price? And therefore he must wait for a month: See [Chapter] 8 and 9. The precise Bull states that it is permissible to make a contract not to alienate the property, they say 49 with Sot.

Cov. . etc. Sed, quando tale pactum non adest, praedictam monitionem semper faciendam esse asserunt cum Val. Salmone et Imò sempre credunt justum esse, ut censor praeficiatur in emptione. VI. That no other penalty be established for a non-satisfied pension, or for the loss of an extrinsic gain. Suppose that wheat worth two aurēs was to be delivered at a time when it is worth one, according to Molina and n. 20.

But naturally, the imposition of a proportionate penalty is not illicit; likewise, according to natural law, the demand for interest from an extension of time can be justified; but by Bulla, in order to avoid usurious fraud, it cannot be deduced into the contract, as . 2 c. 22 n. 85 teaches.

Nevertheless, in the forum of conscience, on account of culpable delay, the debtor is held bound to interest even extrinsically, VII. Let a new census not be created from unpaid pensions. Whether however that is illicit according to natural law? Benè says in Lugo D. 27, n. 98: this question hangs on another above-mentioned (see the aforementioned note n. 846).

II. That is to say, whether it is permissible to constitute a census from the money due? VIII. That the census-taker may never be able to repeat the price, and conversely that the censusor may always redeem the census, a denunciation is made every two months. The agreement, however, that the census may never be redeemed by the tenant farmer after compensation has been paid, in itself is not illicit, as stated in 2 c. 22 n. 26; and those who say: This is taught to all: For just as the tenant farmer can sell a fund or servitude forever on that land, so also he can have the right to its fruits; and for the same reason it is also held licit to establish a census with an agreement such that it cannot be redeemed unless within a certain time, as commonly taught by 9.

Sot. lib. 6 q. 5 art. 3 Concl. 3. . 6 p. 24 § 1 n. 4 et . n. 43 cum Salas, Arag. et Reb. contrà aliquos: Modo (intelligendum) pretium proportionatè minuatur. Commonly also do P. Concina and Prado, etc. teach (contra 140 Lib. III. Treatise. V.

Concerning the Seventh Commandment of the Decalogue in its entirety: For it is just that as the buyer has counted the entire sum, so also he should receive the entire sum at once. IX. That a greater or lesser price may not be sold for than was originally constituted. According to natural law, it is certain, as they say, and even the Bull itself attests, that this seems most probable, namely: "It appears likely that this Bull of S. Pius obliges in conscience," according to 4 art. 3 cum. et Bon.* §48. It is asked I., whether this Bull obliges S. Pii in the matter of conscience? Habert negat. 1. 4 p. 324 (dicens Bullam obligare in solis locis Sedi Apostolicæ subjectis) Sa v.

Census, n. 3. Great 2. 2 l. 2 c. 7 q 2 n. 57. likewise . D. 3 q. 4 p. wn n. 45 et putant probabilem ipse Bon. et . 9 tr. 2 cap. 6 § 2 n. 4. Reason, because in the internal forum only those conditions are required which by the law of nature are necessary for the composition of a census; whereas the Bull is constituted to remove frauds; hence, where there are no frauds, the Bull does not obligate in conscience the contracting parties, but only the judges, lest in the external forum the contract be admitted. However, they more probabliy affirm that the aforementioned Bull obliges even in the internal forum Lugo D. 27 n. 83.

Bon. l. c. n. 46. 2 c. 22 n. 100. et . See the aforementioned [work] at note 846, version two, chapter two, section twenty-two. That the census be taken. §49 Question II: whether the aforementioned Bull obliges where it has not been received? They commonly deny [the assertion] at page 540, volume 1, book 13 of Tournely, page 540. Mol.

D. 395. 27 n. 61 cum Sot. . And thus I hold it should be maintained, whatever they may say. 4 n. 32. Reason, because although it is more true that the Pontifical laws do not require the assent of the subjects, as (contra . c. et Cabass. 1 de . Croix, etc. However, the common opinion is that where a law has not been received and has been derogated through sufficient desuetude, although those who first did not observe the law may have sinned, the present ones are not bound by it, as the Salmanticensis de Bonac holds. Granad. item 4 c. 16 n. 9. 1 n. 13 n. 5 et asserit certum esse, quod lex adhuc ecclesiastica desinat obligare, si per solum decennium non sit recepta; ut pariter diximus d. l. 1 n. 139 cum Bus. Bulla autem S. Pii non est recepta in duobus Regnis Siciliae, ut testantur c. n. 99. Salas, according to Verde's Institutes, chapter 3, number 2389, with de Marinis and de Ponte, etc., it is not received in Spain, as they say, chapter number 32; nor in Belgium, as [it is stated] in chapter 6, number 11, and .

Neither in Germany, as is also stated. Ills. Phir. et tres Parisiis secundo libri duo novem decimumtendos. Nor in Gaul, as [it is] at Croix, ibid. Nor is it observed in Rome, says Tourn. page 541. ## DUBIUM X. ### What is cambium? 850 What is cambium and quadruple? 852 Is it permissible to have a small cambium? 853 Is cambium through letters? 854 Real cambium? 854 What about fictitious or dry cambium?

Is it permissible to have a cambium with a recambio? What is to be said about the Francofurtense change? 855 Is it permissible to expend adulterine money? 856 Is it permissible for a servant to profit by exchanging the master's money? « Resp. Cambium, quod permutationem significat, 850 » hoc accipitur pro sola permutatione pecuniae. And it is a contract by which someone willingly exchanges money with another for some profit other than chance. Which, if without usurious intention it be done for just titles, such profits are estimable as good, it is manifest that they cannot be evil.

Wherefore, since there are four kinds of exchange contracts, 142 Lib. III. Treatise. V. Of the Seventh Commandment of the Decalogue.

therefore, for this reason especially 4. A small penalty; or manual, » 2. Cambium per litteras 3. Royal exchange, 4. » Dried exchange, or counterfeit; » Thus are these matters resolved.

» 1. It is lawful to engage in a small exchange, wherein lesser sums of money are given for greater ones, or contrariwise: because here there are just titles for some gain, namely the labor of the changer in counting the money, and also diligence in seeking all kinds of money so that he may be prepared with any means; likewise purity of material and convenience, since when gold or other coin is given as convenient for lesser sums and inconvenient for greater ones. 3 t. 4 c. 19 n. 4* (And this is also lawful to those who do not have the office of changing money.) It is also licit to change by letters, namely when the changer here, for example, the prior of a monastery receives money and later sends it elsewhere through letters. Francoforti refundit per suos factorés; quia hic etiam sunt justi tituli, scilicet virtualis trajectio pecuniae, et ejus assecuratio. For he does no more than if he were to transfer the money from Campsario to Frankfurt by means of a letter of exchange, provided that there is no risk involved.

Nevertheless Campsor ought to demand less than if he had really transferred it; c. Bon. d. 3 q. 5 p. 1.; and solutions should be made where determinations are fixed, and according to the common taxatio of time from one place to another. See)* » 3. It is licit to engage in real exchange when the abbot of this monastery gives money, so that through his agents he may receive it from the campsor who elsewhere has the money but needs it now here. The title of this exchange is also a translation and an assurance: for Campsor did no more than if absent pecuniæ of Campsarii were made present here, or as others say, if he had purchased something present with absent money, which in either case is less valuable; Laym, l. c. n. 6 et 7. Bonaventura, loco citato * (Probabiliter ait Croix l. 3 p. 2 n. 1031 cum quod licite potest Campsor accipere lucrum cambii, esto translatio pecuniae sit ipsi utilis.

Because in common estimation this translation is a gratuitous profit, since there is commonly an inconvenience in it, and then the convenience of Campsor happens to be by accident. * 4. It is illicit to engage in a fictitious or siccum cambium, which is nothing other than a title for gain; thus. » gr. Titius, being in need of money, asks Campsore to give him 100. Campsor autem non aliter dat, nisi francorum cofurti vel alio loco distante solvendos, petitque ab eo pretium quod solet dari pro locis similibus.

Therefore Titius receives [the money], yet truly he does not intend to repay in these places; rather perhaps he does not even have such a correspondent, and this is certain for Campsore: this contract is a fictitious bill of exchange, and indeed a usurious one, consequently veiled usury. Campsor however will be excused if that profit demands the title of a forbidden profit. See more at Tolet. L. 5 C. 52. Bonaventurae, dissertationis

3, quaestio 5, punctum 1. Here it is asked whether it is licit to engage in exchange with a collared calf, commonly known as Cambio collaricorsa?

Case is this: You receive one hundred nummi from Campsore to be paid in Sicily; but because you do not have either money or an agent there who will pay on your behalf, you ask Campsore to allow him to provide his resident agent in Sicily, so that the debt may be paid to Campsore with interest on the exchange, and Campsore writes to his agent, ordering him to act as your agent in paying the exchange to himself with profit, and also to receive the debt of his own account: But since you do not have money in Sicily, that agent replies to Campsore, demanding from you the payment of the debt at Naples with additional interest on the re-exchange. Quinque tractatus tertii capitis quinti decimae tertie dicunt hoc contractum probabiliter esse licitum, et citant Lugo. But this kind of contract is disapproved by P. P. 549, n. 2. Cabass. l. 6 c. 10. n. 7. et . n. 44. qui ait saltem practicè hoc esse cambium siccum duplicatum: Atque ego censeo etiam speculativè, cum verè in eo casu neque tu intendas pecuniam acceptam restituere, nisi Neapoli ubi accepisti; neque contrà Campsor intendit exigere pecuniam creditam, nisi Neapoli ubi tradidit, ut ita ex sua pecunia lucrum percipiat. I know not how this can be excused from the evident stain of usury. 5.

As regards the Frankfurt exchange, in which merchants giving a bill for payment at nearby markets demand less, and those for more distant markets demand more; if therefore it is demanded more precisely because the settlement is deferred, this is usury; but if on account of some other just title, for example, cessation of profit, since money is an instrument of trade, and if through its prolonged absence there is a loss of profit, and the longer the time, the more they demand as interest, then such gain is just. c. n. 9. ex Mol. * (I consider this bill to be licit so long as it truly bears fruit.) But solely the delay in the solution will certainly not be a just cause for increasing the price, as rightly notes P. p. 557 n. 2.)* Whoever has received money to be changed or otherwise, and has accepted it either through ignorance or inadvertence, cannot expend it: because a thing defective in quality cannot be transferred to another, without the defect being detected, as is said in the passage about Sale. Neither from the fact that he himself has been deceived can it follow that he is able to deceive others, since the action in which he was deceived does not confer any such right upon him, according to Bonac. d. 3. g. 5. p. 1. But others distinguish: If the coin is not materially false, namely if it be stamped with the mark of the Prince and made of good material, of equal weight, then you may spend it, since no harm is thereby brought to another: thus n. 30. et Croix lib. 3. p. 2. n. 960.

If, however, the counterfeit money is also materially false, then certainly you cannot use it. It is doubted, whether, if you expend it in good faith, you are bound to restitution? They deny it, Sylvester and others say. R. 3. who considers it probable. But more truly affirm it P. c., who says that all agree in this.

Reason, because then to the restoration of the tender age of the very contract by which you are obligated to pay a just price for the thing bought; yet when you give base money for silver, you pay a most unjust price minimally. Whether the servant, receiving gold money from the master to satisfy the creditors of the lord, can gain profit by exchanging that for lead? It is affirmed because it is a profit from industry; unless it be against the express or tacit will of the lord, n. 7. according to Lug. . ## DUBIUM XI. ## What is a location and a conductio? See various cases among Bus... When can the speaker expel the conductor before the time is fulfilled? Can the successor of the locator expel the conductor? Is there due to sterility a remission of rent for the tenant? Is it allowed to the poor to speak the right of alms-giving? When departing on the same journey, can one receive double wages from two (different) persons? Is the conductor obligated to make improvements at his own expense? And concerning the expenses of care? Resp.

It is a contract by which one grants to another for a time the use or enjoyment of his person, or some movable or immovable thing, constituted with a certain price, or reward, or pension. Houses, horses, servants, etc., are conceded for use and enjoyment; elocated cows, calves, fields, orchards, etc., are conceded for use. Hence, considering the nature of such contracts and the legal disposition, the following cases are resolved. 1. If a thing located before tradition perishes, the contract is dissolved, and the conductor is liberated. 2. Si res locata ante traditionem pereat, contractus dissolvitur et conductor liberatur.

If, without the fault of the conductor, the use or fruit of the thing ceases, for instance because a house is endangered by ruin, infested by specters, or due to the danger of pestilence (unless customarily otherwise), or because it fails to provide safe habitation in time of war, the conductor is liberated from paying the pension temporarily, wherein he cannot inhabit, or use or enjoy anything else, as stated in 3. t. 1. c. 23. 2. c. 24. d. 2. etc. I serve, or labor is performed by a person under my direction, no notable wage is due for time during which he lay sick; nor to one who is merely ill, except for trifling expenses: unless indeed otherwise has been agreed upon, or custom permits. Unless, however, there is contrary custom, the conductor is released from paying the pension for a time, whereby he cannot inhabit or use/avail himself of anything else, as stated in 3. t. 1. c. 23. 2. c. 24. d. 2.

etc. If so, then. Conductio. * ( ) *. » 4.

On account of a slight damage or misfortune, nothing is remitted to the tenant from the pension: otherwise, if there be great calamity. If nevertheless the damage is compensated by the fertility of either preceding or following years, it is not remitted. 2 c. 24 d. 4 *. (5. Si pluribus annis ob cæli clementiam (secus si ob industriam colentis) uberiorum fructuum ex fundo elocato provenient, potest colono pensio augmentari. If however the fertility of the preceding or following years makes up for the damage, it is not remitted. To expend in the thing conducted, which are of a lasting nature, namely to conserve sarts and thatched roofs, tributes, and public burdens for the sake of the tenant, or lord; unless otherwise agreed upon, or custom permits otherwise. c. n. 4.

To make expenses in regard to things conducted for a durable purpose, such as conserving thatch, tributes, and public burdens, is directed toward the tenant, or the lord; unless otherwise agreed upon by convention or custom. c. n. 4. If the conductor in a managed affair has made necessary or useful expenses, he can deduct them from the pension, or recover them from the lessee, and while they are not being paid, retain the managed affair. 8. Even though a fire usually occurs through the fault of the inhabitants, and thus in doubt against them, because nevertheless it often happens through the fault of others whom the head of the household is not obliged to provide for, hence the conductor must be absolved unless the locator shows the fault. See 6 and 7 R. 3i, where Haun. and Berl. teach that if it has been established that a certain and determined member of the family has committed fault in regard to his office, for example, a stableman who has improperly guarded the light in the stable, the father of the family may be held liable for damage: otherwise, if the fault is someone else's: or if it cannot be determined whether the incident occurred by chance or through the fault of some person.

If it is determined that a certain and definite fault of some member of the household has occurred around his duty, for example, a stableman who has improperly guarded the light in the stable, then the father of the family may be held responsible (unless the servant has shown himself to be faithful and diligent); according to this, if it is another's fault: or if it cannot be determined whether the accident occurred through some fault. If the master of the household, for instance, previously wished to emigrate, this is permissible and he can entrust another person with his residence: nevertheless, as regards the pension, nothing is remitted to him. » 10 Non potest locator antè tempus præfinitum conductor invito privare re conductà, nisi in his casibus: 1. If he does not pay the pension; nevertheless, he ought to wait two years, unless after more than two years

the matter has been settled: 2. If an unforeseen case occurs: by reason of which the house, for instance, is necessary to the Lord himself. 3.

If it is necessary to repair a thing that has been rented out, it cannot be done by another inhabitant. If the conductor in the matter conducted ill versed himself, for example, if he destroys or exploits it, such as by maintaining prostitutes there, 11. The universal successor, or rather if the heir cannot expel the conductor before the completion of the term: but the partial successor, as purchaser, legatee, and so forth, is not bound to adhere to the location contract, neither is he like the conductor; unless otherwise agreed, for example, that the located thing not be alienated during the time of its location. See. 2 cap. 24 et . » 3 t. 4 n. 22.

It is common and certain with Bus., as above, 859, that the universal successor cannot expel the director; thus commonly say Lugo D. 29 148 Lib. III. Treatise. V. From the Seventh Commandment of the Decalogue, n. 16, and Sporer on Practice, c. 7, n. 23, with qualification, according to the letter.

Tenth way. C. concerning the buyer. Chapter of the same title. The conductor however has the right to bring an action for interest against the lessee, or his heir, according to law. Whoever has the farm of 25 feet from Locat.

They nevertheless receive 3 p. 2 n. 1047 if the field had already been cultivated or sown by the tenant; because (as they say), justice does not permit that the tenant should bear that loss. But I say that this exception is contrary to the express sanction of the law, since from the aforementioned texts the particular Successor has a certain right to expel the colonists: On the other hand, I do not see how justice would be violated, when the colonist already has an action against the lessor or his heir for recovering damages; for it is expressly stated in c. l. Whoever holds the farm (wherein the discourse is concerning the legatee expelling the colonist from the farm bequeathed) says: And this damage (namely that which results from the expulsion) pertains to the heir. However, it should be noted that a minor is bound to abide by the lease of his curator: the beneficiary of his predecessor: and the wife by the lease of her husband; see Croix, lib. 3, p. 2, n. 1047. Ques. 1. Whether on account of jacturation by reason of sterility the colonist can petition for the remission of the pension?

According to the law of nature, the jactus sterilitatis per se regards the conductor; however, by virtue of equity, if the damage is immense, something should be remitted; unless sterility is compensated by the fertility of other years, as Gregory IX decreed in one of his Extravagants:

"To remedy the great inconvenience caused to the conductor by sterility, when there is a defect in the thing itself, or through no fault of the colonist and due to some fortuitous event, remission of pension for the colony of the Church should be made; unless sterility can be compensated by the fertility of preceding or subsequent years." Hereby, if no fruits are received, a pension is due, as taught by Lug. D. 29 n. 40 ex legibus. If wages. §. Greater force. ff. de Locat. If however some fruits are perceived to be received, they say 2 c. 24 n. 17 and the same Lugo n. 43 with Cov.

Bartolo, et aliis, tunc tantum remissionem esse faciendam, quando deductis semine et expensis non supersit quod sufficiat saltem ad solvendam dimidiam pensionem. However, they think that Croix lib. 3 p. 2 n. 1049 with Laym and others consider it necessary to observe this custom of places in this regard. Question 2. Whether it is permissible for a pauper to speak the law of alms begging! Affirm. lib. 1 c. 7 dub. 2 cum Henriq. et . Preface number twenty-three. Because from one side it is just that the contractions are equal, since on both sides there is an equal chance of gain and loss; and from another side this would be the same as if the poor were mediately for another to ask alms.

But more decidedly do Lugo D. 29 n. 9 with Ròdr. and 3 p. 2 n. 1044 deny it. Reason, because although this contract is just between the lessor and the lessee, it is nevertheless unjust with regard to those who give alms to the poor, willing to give only to the poor and not to the lessee, who is not considered poor, as is supposed. Nor is it valid to say that faithful intermediaries give alms to the poor; for Croix well responds that what has been acquired by right of law for petitioning should not be sought now in the name of a pauper, but in his own name: and therefore neither mediately nor immediately are those alms given to the poor. But if one were to think that the case should be thus stated: namely, that if the poor man could not petition by himself; for in this case, although the alms do not here and now reach the possession of the poor man, they nevertheless contribute so that his assistance is secured; otherwise it would not be found who might circumvent those places on behalf of that poor man, and thus the poor man would remain destitute. Question 3: An nuntius proficiscens ad eundem locum possit licite accipere a duobus duplicatam mercedem de aurigis? Ait P. 632 nullam esse difficultatem quod possint, quia talis est consuetudo; de nuncio vero opinatur æquum esse ut dimidiam tantum mercedem exigat à secundo conductor.

And this seems sufficiently probable, when by reason of that case the operation of that journey, which is not undertaken by the grace of that second conductor, does not seem to be worth as much as it would be worth if [it were] 50 libras. III. Treatise. V. According to common opinion,

as Concina asserts, and Croix considers probable in his third part, chapter two, he thinks so too.

Reason, because by chance it stands so that its works are useful to two; but in itself from each one it demands just recompense, since it binds each one by justice to perform that task; and if it does not perform it, it commits indeed a sin of injustice against the right of both. See what is said about Change n. 853 at the end. Question 4: Whether a conductor bound to improvements should carry them out at his own expense? They deny D. sq n. 6q; but more truly does Lugo affirm the same in the said place with Lop, and Croix lib. 3 p. 2 n. 1053, namely, that since a person obligates himself to do something, he is per se considered obligated to do it at his own expense: just as if someone obligates himself to pay rent for a tenant's house, he is bound to incur expenses so that the payment is sent there. Understand, provided that in the lease contract something is deducted from the ordinary rent; for this burden of improvements being alien to the nature of the tenancy. Moreover, minor and ordinary expenses incurred in carrying out the matter are regularly attributable to the conductor; extraordinary ones, however, to the locator, as Croix l. 2. n. 1052 with n. 864 Question 5.

Si debeatur pension famulo conducto ad servitium anno, etiamsi ægrotet per aliquos menses, puta per trimester? Saint Anthony affirms it. 3 p. 2 n. 1050. But the common opinion more truly denies it, as Lugo D. 29 n. 58 and Croix l.c. at the end with Mol. affirm, because no salary is due for a service not rendered. Azorius, however, thinks that at least the lord ought to be held bound to provide food for the servant and necessary expenses for his maintenance. However, they better say that.

Rebrill. et alii cum Diana non tenêri nisi ad sumptus leves pro brevi infirmitate: Quinimo non immere- tito ait Lugo neque ad id obligandum esse dominum nisi forte aliquando ex charitate, casu scilicet quo infirmus esset in gravi necessitate. However, it is otherwise taken up: According to 3 Robert [Robert I of Normandy], there was a custom in some place that masters are bound to the whole stipendium, if a servant, conducted for a year, falls ill for a few days. ## DUBIUM XII. ## Concerning the Contract of Emphyteusis, Feud, and Libellatic: What about Emphyteusis? Is rent due in case of great diminution of fruits? What about Feud? What about the Contract of Libellatic? Resp. 1. Emphyteusis est contractus similis locatioi, in quo res immobilis, quæ culturâ possit effici melior, conceditur alteri, vel in perpetuum, vel non brevius saltem quam ad decennium; ita ut dominium ejus directum et possessio civilis maneat apud dominum, qui tradidit in Emphyteusim dominium autem utile transferatur in emphyteutam cum hoc onere, ut quotannis certum canonem, ut vocant seu

pensionem domino solvat; quam si totam solvere negligat, 26 annis continuis in Emphyteusi Ecclesiastica (cum scilicet res est Ecclesiae vel pii loci), vel in seculari 36 annis, incidit ipso jure in poenam commissi ut dominus eum expellere possit. Etiam auctoritate propria ut multi cum Sed. See Croix lib. 3 p. 2 n. 1062.), even though he was not interpellated in the solution: for it is permitted to prescribe immunity for the future; yet Wesemb. and others deny this, see the cited volume.

But what the law is in this contract depends on the custom of the place, which must be conceived in a written instrument so that it may be valid. See. Lym. lib. 3 t. 4 o. 23. . 2 c. 24 d. 9. Whether an emphyteutic tenant should be entitled to a pension when he suffers a serious loss of produce? He says: 33 D. 9 p. 7 n. 5 concerning the rigor of law and custom, that the whole pension is to be paid, according to what l. 1 C. de Jure emphyt. decrees, where it is stated that, when the estate remains in part, the pension is to be paid. 2 cap. 24 n. 49 and Lugo D. 29 n. 88 correctly understand this law to mean that, when the pension is small compared to the fruits, it is more given for the recognition of the direct lord than for compensating the fruits.

Accordingly, however, if it is great and nearly equal to the fruits, for then it should be diminished according to equity, or from the land as it perishes in part, or because a great sterility is coming upon it. Whether, however, the emphyteutic tenant enjoys privileges which the direct lord had in the thing itself? They affirm on page three, note two, number one thousand sixty-four. But they deny it probably. Reason, because when transfer is made to the emphyteutic useful dominion over the thing, the thing becomes its own; whence, if indeed he himself be a layman, he cannot enjoy the privileges of the Church to which direct dominion pertains. 867 » Rèsp. 2.

A feudum est contractus similis Emphyteusi, quo res immobilis alicui conceditur, cum translatione dominii utilis, proprietate retentâ, sub onere non quidem aliquid solvendi, sed exhibendi fidelitatem, et obsequium personale directo domino. If, however, the Vassal nevertheless does not perform (for thus he is called the acceptor of the feeu), he loses the feeu. Sometimes also something must be rendered in recognition of direct dominion, but then from that part it ceases to be a pure fief and inclines towards emphyteusis: However, what the law is concerning fiefs depends also upon local custom: those which are common laws, see there cited. Resp. 3. A libellatic contract, or a donation to a libellum, is said when an emphyteuta, or feudatory, receives that thing which has been accepted in the manner similar to a feudal or emphyteusim contract from a third party (for which, however, if it is for a term of ten years, the consent of the lord

is required): so that it may be as it were a subfeud, a subemphyteusis.

Thus. 1 n. 6. » DOUBT XIII. What is sponsio and ludus? What is sponsio, and is it licit? Is it permissible to promise regarding a sin to be committed? What is ludus, and when is it licit? Is it necessary to restore the profit to the daughter-in-law? Against a Religious Person? What if a Religious person plays at something illicit by virtue of general permission? Can a Religious person gain more than he loses? If he stakes a greater sum than he can afford, is he bound to restore the gain? How much can a son of a family stake in play? When is one bound to restore what has been given back through deceit? Is a promise valid if one promises a greater sum than another? See elsewhere in the same place. Can one compel another to gain profit from gaming? Must he restore the gain knowing himself to be bound to lose through his own skill? Is it licit to use cunning?

What if he uses illicit things, and how much then should he restore? May one play before sacred meals? 883 It is about the forbidden game. 884 What are the Laws that prohibit this game? 885 Whether it constitutes a sin and in what manner. I. Quid si utatur illicitis, et quantum debeat tunc restituere? Are laymen committing a grave sin by playing at this game? 886 Does one commit a serious sin by playing for profit? 887 Can the victor retain the gain from a forbidden game without sinning gravely? 888 What if he impedes the Judge, so that he himself may not be condemned? And whether one is bound to confess the truth to the Judge who asks it? Whether he can retain the gain if he played with the intention of repeating? Whether the victor is bound to restore the stakes? What if both have renounced the law? And whether the victor can petition for a dispensation from his oath? Whether the victor can compensate himself for the loss? Whether he can settle, if falsely threatened with repetition in judgment?

What about Clerics; who are included among the Clerics? 896 Do Clerics certainly gravely sin frequently and in great quantity when they play? 897 What if only frequently? 898 What if only in great quantity? 899 When do they not sin gravely nor lightly? Lib. 154. III. Treatise. V. From the Seventh Commandment of the Decalogue. Has this proceeded in every game of cards? III.

Regarding Religious individuals: whether and in what manner they may sin by playing this game for amusement? 902 IV. Regarding Bishops, how do they themselves sin in this? Do clerics and religious assist at these games and thereby sin gravely? 2. Resp. A sponsio est contractus, in quo duo de veritate, aut eventu alicujus rei certantes sibi invicem aliquid spondent, ut id ejussit, qui veritatem assecutus fuerit: v.g. certo tecum

iuramento hanc vel istam civitatem obsessam, captam etc. Ut licite fiat quærunt fideles ut fiat super re dubia. 2.

That there may be equality in the thing promised with equal uncertainty. * (Equality is present when the matter is proportionate to the probability of the other party, Lugo D. 3 n. 77.) * 3. A doubtful event in both. That each may receive that in the same sense which is disputed about, Molinae: Caput: Lugdunum d. 36 sectio 6. But it is questioned whether the common so-called promises of Scomneson are licit? They deny S, Sylv. v.

The matter, question 4 at the end and Concina, tome 7, page 608, note 21 with page 3, line 11, chapter 19. doubt 1. . book 1, chapter 8, doubt 32, note 2. Lug. D. 3 i n. 73. 554. . 20 R. 2. Salamanca, chapter 4 note 74 along with many others. Reason, because in this is a contract of fortune by which each respondent is exposed to an equal risk of loss and gain.

Neither is it true that laws prohibit pledges unless they are made near bodily contests, for the sake of hatred, lust, and similar causes; rather, indifferent pledges are more approved of, as in l. If anyone f. de Verb. Obl. and l. If a father. C. de Tamen in individuo (cum ex mea sententia non detur actio indifferens) regulariter censeo hujusmodi sponsiones non excusari à peccato veniali, quia eis deest motivum cohonestans licitam recreationem, sicut habetur in ludo honesto.

And thus it seems that St. Anthony understands in the aforementioned place, calling such profit turpitude, as not deserving any utility, but rather vanity and prodigality. But no one doubts that sponsiones concerning clothing or drinking are disapproved of; see Lugo loc. cit. Thus by the Bull of Pius V. concerning the election of etc., sponsions are prohibited regarding a doubtful election of the Pontiff, or concerning his life and death, as referred to in c. c. 20, dub. 3. Item testifies. Reply 2.

Gregorius XIV., per aliam Bullam, quae incipit: Cogit nos, ampliasse praefatam Bullam Pii etiam ad electiones Cardinalium, et adhuc extra Urbem sub excommunicatione late sententiae, Papae reservata, respectu ad electionem Pontificis; et respectu aliarum sponsionum, ipsae annullantur in utroque foro, adeo ut quisque teneatur ad restitutionem ante omnem-sententiam. Thus likewise, as it is attested by c. n. 4., are prohibited the sponsiones of the Scholastics of Salamanca concerning elections to cathedras. It is doubted whether a sponsorship is licit regarding the committing of sin 8.8? Bene distinguit Lug. D. 31 n. 75.

Si sponsio est de peccato patrando ab alio tertio, illicita est, si spondens

optet peccatum, vel opem ferat ad peccatum committendum. Translation: If a sponsio concerns receiving a sin from a third party, it is illicit if the one promising desires the sin or assists in its commission. Thus Lugo in loco citato; et denique advertunt idem Lugo, quod si peccatum opstans eo casu committeret, peccaret certe, sed non teneatur ad restitutionem, quia laederet virtutem quam laedi optat, sed non laederet justitiam.

If however the sponsio is concerning the receiving of a sin from one of the very sponsors themselves, it will be licit, if you, for example, promise another to commit a sin, because then the sponsio turns him away from the sin: Otherwise, if you promise yourself to commit a sin and not the other, then the sponsio would lead to committing the sin. But doubt arises: whether in this case, where you have promised illicitly, you are bound to make restitution? Rightly do they deny it. Book 156, Chapter Lib. III. Treatise.

V.-Concerning the Seventh Commandment of the Decalogue, no. 57. On the 19th day of February in the year 7 and on the 2nd day of March in the year 1. Reason, because although by promising you commit a sin, yet you do not thereby injure justice, since at that time you will not receive any price for the sin committed, but rather for an event already accomplished according to the promise made. And in this also Saint Augustine agreed, loc. cit., where he says: "Nevertheless, it is not necessary to restore; but it should be expended for the poor, and more out of counsel than out of precept. 'But a game is a contract by which those who play with each other are nourished, yielding to the victor, each having laid down what he had.' " Such contracts are licit according to the law of nature, provided that the proper conditions be present, and that no obstacle arise from elsewhere, such as scandal, legitimate prohibition, or inequity, nor occasion for sin: because, just as any person can absolutely give his property to another, so too under some condition, whether fortuitous or through industry, C. 26, d. 1.

Good. D. 2 Q. 3 P. 1. » 1. He who is not the master of a thing cannot alienate it; he cannot play with it or dispose of it either. And thus ought he to restore it who had gained advantage from a religious person and from a filio-familias who was not able to alienate it. 3 t. 4 c. 21 n. 5. That which one gains from gaming with a filiofamilias, he ought to restore to him, unless it be from castrensian goods, etc., or unless the game be moderate according to decency; or there be tacit permission from the parents, from the wife, and from the Religious, as Lug.

However, this does not apply to illicit games forbidden by law, rule, or prelate, such as dice games and board games, and consequently all

fortuitous games, unless they are played in small quantity and in those religious orders where use is permitted for recreation; thus n. 95 with At states that in reformed religious orders such games would be a grave sin on account of the special prohibition of the rule, as commonly stated by Lugo, Diana Dic. etc. And then the profit derived must be entirely restored to the Religious or monastery. See more fully below to be said about this particular point n. qoi. Where even there will be discussion about the quantity which other Religious may expose themselves to in gaming. Hence it is asked whether, if a Religious, having obtained permission 8.3 generally from the Prelate to expend some sum, expends it in illicit uses, for example, in forbidden games, or with prostitutes, etc., then he sins against the vow of poverty not only himself but also the one receiving is bound to restore the sum to the Monastery? The first opinion asserts: Reason, because such a license from the Superior is neither presumed to have been given nor could it have been given, since he himself is not the lord, but merely a simple administrator of the goods of the Monastery.

Nevertheless, the second opinion, which is held by many eminent Authors, states that . Pelliz. ibid., n. 84, quibus Croix, l. 4, n. 114, adhaerere videtur: censet nec Religiosum tunc peccare contra votum, nec restituitionem Monasterio deberi ab ipso, aut ab accipiente; Ratio istorum, tum quia (ut ait Croix) tunc licentia habetur ut data, non a Prælato administratore, sed a Religione domina, quae in tali casu, licet sit invita quod modum, non est tamen quod absurdantiam; et Religio praesumitur (ut ait Rebell.) sape in eam consentire ne periclitetur fama subditi vel Superioris: Tum quia eo casu Superiour aufert de se impedimentum quantum potest; et ideo, cum universaliter licentiam praebet, non est cur credatur eam limitasse ad usus tantum licitos, ut dicunt Croix, et Lugo cum aliis. But notwithstanding these things, I hold the first opinion to be absolutely more probable. See what is more fully said in l. 4 n. 3r. Question 2: whether a Religious can gain more in play than he can lose? Distingue: Potest si eodem jactu (exponendo v.g. quinque argenteos) totidem a quatuor personis lucretur; vel si ludus moraliter non interrumpatur; quia tunc, sicut posset amittere pecuniam jam lucratam, una cum sua exposita, ita bene potest plus lucrari, saltem duplum suae pecuniae expositae; c. 19 n. 33 et Valent.

Resp. etc. with lib. i58. III. Treatise. V. Of the Seventh Commandment of the Decalogue.

If indeed a moral game is interrupted, or if the players are entirely different, it cannot fully expose the money gained, because that money does not belong to them but to the Monastery. They nevertheless concede, with Lugo and Villal, that a game may not be interrupted if one player is

substituted for another in the same kind of game; or if on another day the game is played politely with the same participants. The same is taught regarding household slaves, in lib. 7, c. 8, D. 8, n. 2; and similarly he says, Rebellius, Question 3, 8, 5. A Religiosus, qui sine licentia exponit ludo majorem summam quam possit, tenetur restituere lusori summam lucratam uno jactu supra illam quam perdere poterat? They deny.

Armill. Grass. December. Law. Book 7. Chapter 19. Note 85. The reason for these matters is that a contract sometimes can be valid from one side and invalid from the other, as are contracts with a ward and the Church without solemnity of initiation; although the law opposes it far more probably, it yet supposes probable: But the reason adduced seems to me in no way probable, since the law introduces parity into the contract by assuming equality, and only in respect to the deficiency of solemnities does it favor both the Church and the ward; whereas in our case there is a lack of equality and justice in the contract, which I do not know how the law can favor, since it is essentially unjust. Here I adhere to the second opinion which holds that...

And this agrees with the doctrine of Molina, part 3, n. 1079, who rightly say that if someone profits by exposing to play money which is stolen and has nothing else in it to offer for exchange, then he is bound to restore the profit because there was no contract when he exposed the money, which a collusor could not acquire. They nevertheless say Henri. Salon. Therefore, Chapter Three. Dub.

Thirteenth. Of Contracts. 15g etc., according to which, if one party knows that the other is either a religious person or a minor and cannot expose that quantity, then he can claim nothing back; for willing consent does not suffer injury. But Salas denies this more truly according to Lugo D. 3i n. 59 and Sanch dict. n. 87 with Soto, Lop. However, this is rightly admitted. If indeed the conspirator himself does not play with an intent to gain profit, but rather for recreation, it would not be a matter of great moment, as even the subditor correctly states: «If, however, a son of the family (and similarly a religious person according to 26 l. c. d. i.), is kept in a distant place from his parents, he may moderately take something for an honest game from the provisions, for example, 5 out of 100, because such is commonly presumed to be the will of the parents, as stated by Soto l. c., and Bonaventura de Restit d. 1 q. 3 p. 2 n. 10 et seq.» "It is, however, probable that the very learned Junii sensed this, namely, that in such a case, if the son of the family does not wish to restore what has been lost in play, he lawfully may oppose an exception and is not bound to restore it, reserving something from the provisions."

Whether, however, a son of the family can expose himself once to what he might lose throughout the year? Some deny it, but more probably they affirm it. Nor is the victor then bound to inquire whether the son can, or cannot, expose that great sum, unless he knows that this one is accustomed to play with others. Thus it is said. Number 1073. 3.

He is bound to restore who by victory through cheating and deceit, against conditions 677, has led another to play; for example, if he pretended to be completely ignorant of the game, and thus deceived another, according to book 160, chapter lib. III. Treatise. V. Of the Seventh Commandment of the Decalogue.

». provoked those who were more negligent by inviting them to play, whom otherwise he would have preferred not to play, or if he had neglected certain vices which he had previously consented another to avoid in play, otherwise not consenting, Mol. d. 517 . c. Bon. d. 2 q. 3 p. 2 n. 3. » » 4. If in the matter which is promised there be inequality, and this be known to one party (for example, whose money is greater), although he nevertheless wishes to promise, the contract can probably hold; because to him who knows and consents no wrong is done, as it is said: "Contrarium tamen probabilius docet C. Lugo d. 3 r sect. 6 n. 8i ex Molin." However, if it be unknown, the other cannot gain; because there is not an equal condition for both parties, and one does not expose himself to any risk. See 5 c. 25 q. 7. Bonaventura, dissertation 5, question 3, page 2, question 36, note 3.

Dicing rooms, dub. 13 num. 3 » Escob. et Card. Lugduni licei conspectu » An valeat sponsio, si quis manifestet se certò rem scire et tamen hoc non obstante aliter perseveret in sponsione? The first opinion affirms that it is valid because the other should bear the damage resulting from his own pertinacity. But the second opinion is much more probable to me than those which follow in Lugo D. 3 i n. 83 and Croix l. 4 n. 1068, holding that the contract is null; similarly as if someone pertinaciously wished to buy a false gem as if it were true. Then indeed, although the seller manifestly reveals to him the truth, if nevertheless he knowingly purchases, the purchase is still null, since there intervenes no other contract than that of sale; and the purchaser does not intend to transfer the dominion of his money by any other title than that of sale; which being unjust in substance, is null.

It is objected 1. Si ille qui à initio certus videbatur de aliqua re, postea, altero contradicente et spondere volente, incipiat dubitare advertens jam aliàs se deceptum deprehendisse, etiam in iis quæ sibi certa apparebant, tunc enim poterit lucrari. Thus Lugo n. 79. from Spon. qu. 9 n. 116. with

Molina: Besides this I conjecture, if the sponsor, having been deceived, retains his assertion as doubtful, because then he wishes spontaneously to lose; for when he believes something certain which he himself asserts, he promises not because he wishes to yield to his right, but because he is deceived, whence he does not have the will to lose; but when another betrays his own assertion as certain and begins to doubt his own assertion, yet obstinately continues to promise, then his deception ceases, and he truly wishes to lose, insofar as the matter stands according to what the other asserts. Accordingly, si the seller assert that the gem is false, and the buyer, already doubting, wishes to purchase it for more, even if subsequently it is discovered to be false, the seller can properly retain that price. « 5. By itself, and in nature, an honest theft is also permitted even a promise concerning a future event which is connected with harm to another person, for example.

Peter within a year may be subjected to a ritual (even though an occasion for desiring or scheming his death is given, that is, by chance: and the same danger must also be considered in terms of vital peril): nevertheless, human law frequently prohibits this, C. Lugo l. c. n. 74. » 6. Even though a bet with an illicit condition, for example, one in which more is to be drunk than another, is illicit because it leads to sin; yet having gained thereby, do not restore by obscurity. It is probable that Molina teaches thus: since someone has been induced to the law through threats or inducements of any kind and has lost, he should not have his victor held not bound to restore, because such a person played absolutely voluntarily, as Ronan says in loco, citing Molina and Garcilasso against Azpilcueta et al., commonly. Therefore, it is asked whether, if one coerces another injuriously for the purpose of playing, can he subsequently retain what he has gained? The first opinion denies it, because damage incurred through injury must absolutely be restored.

Thus Lessius in lib. 2 cap. 26 n. 9: he who calls common with Malder. Stephen and others according to Croix l. 3 p. 2 n. 1080. The second opinion, which Molina holds according to D. 516 with c. and Garc. as mentioned above by Bus., affirms . 16a Lib. III: Treatise V. It is possible to retain the Seventh Commandment of the Decalogue because then it was not coercion or play, but rather a case or expertise of the one compelling that caused the damage: for if, they say, this compeller were already to have lost and resolved to release, certainly those would hold that the other could retain. Thus commonly do S. Thomas and S. Anthony teach.

This opinion, speaking generally, seems more probable to me (unless he who was coerced by collusion in playing a trick surpasses him who was coerced in his skill at play; for I feel that in such a case one should be held

responsible for restoring at least part of the gain, according to the measure of skill which would have been lacking to the other). Reason: because that contract, notwithstanding the injury inflicted by my fear, was sufficiently voluntary and valid on both sides, according to the common opinion referred to in n. 717. Neither hinders it to say "for as it is answered according to D. Thom., 2-2, q. 62, a. 7, whose words we have reported on p. 562, v." Secondly, quod si irrogans injuriam tunc tenere tur ad restitutionem, quando injuria per se conjuncta est cum damno; sed in nostro casu damnum non est de se annexum injuria, cum metum passus, sicut patidit; ita: aquae poterat lucrari; ergo damnum non peneinit ex injuria, sive ex metu incussi, sed ex inibitario et casu. I spoke per se, for if one has suffered fear and seeks restitution of lost money, he rightly demands that the instigator of fear compensate with profitable restitution according to what is said in dictum n. 717 v. Quivi: 2.

What, however, if he be constrained solely by importunate prayers? Sylp. ap: Croix still holds him to be unable to retain profit. But much more probable is the contradiction with many: What if he be overcome by one who has unjustly conquered him to retaliate further, causing harm, and afterwards lives beyond what was lost? Croix denies this in lib. 3 p. a n. 1080. at the end pisator would have had the right according to custom to compel another to go further in play. But others, such as Adrian and Garci, in the same place Croix says: do not compel him to restitution; I follow the ethos according to what was previously mentioned above, for compelling someone to judge is the same as compelling them to play further games beyond loss. Nevertheless, as we have said, he can be coerced to repeat what he loses after the coercion. 8.

The more common opinion is to hold that he who has read or contested with full knowledge of his own impending defeat ought to be bound to restore. However, the contrary is held, namely, not to be bound, provided that the deceit has disappeared, they are bound. Contrafactum, quia non teuetur quis ex justitia suam peritiam vel scientiam adversario declarare? But he imputes to his own temerity, that he dared to deposit with him whom he did not know scientifically. V. Quia non tenetur quis ex justitia suam peritiam vel scientiam adversario declarare?

Bon. l. c. n. 4 9. One is not bound to restore him who makes use of those wiles which are tolerated by custom and allowed by rule; for each knows such wiles to be customary, and thus tacitly consents freely to them, Bon. l. c. p. 2 n. 2. v. g. 1. If having superior charters and being secure regarding victory, he increases the pledge, or feigns fear, so that the adversary may increase it. If one knowing himself to have inferior charters, simulates and increases the security pledge, so that thereby what

was assigned to him may be left to him, Cardin Lugo, Sam. 3. If he inspecteth the charters of another; solely by reason of his own negligence, and without fraud, securely, if so be that he can see thus placed; or if he constitute another, unto whom he may be admonished. 4.

If by stealth he learn to know the charts behind our backs while playing, which he had previously neither signed nor known about, . Whoever makes use of frauds not against those who are liable to be sued, or with a co-conspirator unknown; for example, if documents are counterfeited, or marked with false signatures from behind, or uses a forged document, or one which he previously knew but now does not know, or arranges them in some manner, etc., is bound to restore not only the profit, but also whatever the other person was capable of gaining by way of profit, and even by way of conspiring. c. R. 42. see also p. 4 t. 3 R. 25. and J64 Lib. III. Treatise. V.

Of the Seventh Commandment of the Decalogue. It is certain that the deceiver is bound to restore not only what he has gained, but also what the other would have justly gained if the fraud had not occurred: according to 2 c. 29 and with Bonaventure. However, in doubt whether the other would have been gainfully situated, the deceiver cannot retain what he has gained, because it is at least doubtful that he would have been justly gainfully situated; but he is not bound to give the amount exposed to the other, because the condition of the possessor is better: since the other was not certainly going to be gainfully situated, as they say in ibid. and ibid.; he is held to give to the other what his hope of victory was worth, which he had through collusion when the fraud ceased; Provided that (I mean by this) in the colluder there would have been a greater expectation of profit than fear of loss; Reason, because in that case that hope, by which the other was deprived through fraud, already became worthy of some price. He who played, because he was fraudulently warned by another who had seen the partners' documents, certainly is bound to restore the certain profit, unless before the warning he had already abandoned (commonly called Posta) playing; However, in doubt whether he would have played if not warned, some say that one is bound to restore the entire profit; But the common opinion, following Croix l. 3 p. 2 and ibid., holds that one is not bound to give anything back: Others say that one is bound to give back the whole amount. I say that it is more probable to hold one responsible even for a probable doubt when the inference of damage is doubtful: But since there was certain injustice on account of that greater probability of fraudulent victory, therefore one is held responsible for something.

Note this: not to be held as one who warns another about his own error,

namely, if he gives a hand, if he counts minor points for himself, Croix ibid. n. 1043 with 1 » » t i. If the player has an intention not to pay, or if he loses and seeks to recover, he cannot gain any profit; consequently, he cannot either retain what he has gained, because he has fraudulently deceived, nor would another wish to play with him, if he knew this; c. d. 5. n. 31. Region. n. 388. Good loco citato » 12. They gravely and commonly commit mortal sin by entirely surrendering themselves to pleasures, knowing that from this they will fall into grave sins, or will be rendered impotent for fulfilling debts due or for nourishing children and dependents, and for supporting their wife, etc. 1.

» 13. To play while reciting the Psalm or the Lord's Prayer is not a sin nor irreverence. It is asked whether it is permissible to play with sacred prayers applied for the victor? Habért and n. 4. deny this, because it is not permissible to mix the sacred with the profane; rather, they say that it would be simony if one were to civilly obligate the victors. But meritously they affirm that the same Council and Ignatius allow it. Reason, because it is indeed evil to use spiritual things for profane purposes; but to use profane things for spiritual purposes is licit and good: This is proven by the practice of the pious.

Just as it is permissible to harm a spiritual thing with another spiritual thing, as we said, so too, if one person plays for money and another for prayers, this would certainly be simony. 14. He commits a sin by playing, if the play is prohibited by positive law, such as dice-playing and similar games which are more based on fortune and chance than on industry. To laymen are things prohibited on account of the circumstances under a venial sin, to clerics under a mortal sin. c. 26 n. 6.

Understand that if a cleric frequently and for a long period of time engages in recreation, but not if it is for a brief time and as a cause of recreation and avoids scandal; because the Canons prohibiting this do not seem to be received except when it occurs with the danger of scandal; as stated in III. tract. 4 c. 21 n. 1. He notes, however, that Dionysius in p. 7 t. 9 R. 2 and from etc., according to the aforementioned laws, has shown such derogation through contrary custom, so that not only a layman but also a cleric does not sin if he primarily plays for recreation and at the same time moderately for profit with charts or dice: Nevertheless in religious orders (among whom discipline is rigorous) 166 Lib. III. Treatise. V.

Of the Seventh Commandment of the Decalogue: • "the throat is strong), so that even Bishops, from a grave sin, scarcely can be excused," ibid. » etc. etsi . g. excitandi, aut recreandi infirmum, vel si parùm ludat ob solam recreationem. » 15. If anyone has been enriched by such a forbidden game,

he is not bound according to the more probable opinion to restore before the judgment of the sentence: because laws do not annul a contract, nor hinder the acquisition of dominion, but only permit that it may be reclaimed. But as for him who has lost through such a game, is he thereafter bound to make good this loss?

Others deny it; see 5. Mol. "Reg." Fill. etr. Others affirm as in c. p. 3 n. 2.

See Diana p. 2, tract 7, rubric 8. and p. 7 t. 9 R. 21. » 884 All these things are worth the price of an operation; each one should be recalled more carefully and diligently to the touchstone. Above all, these laws are to be noted beforehand, which prohibit forbidden games both according to Canon Law and Civil Law. According to canon law, in Canons 42 and 43.

Dict. 35 sic habetur: Episcopus, aut presbyter, aut diaconus, aleo et ebrietati deserviens, aut desinat, aut certe damnatur. Subdiaconus, aut Lector, aut Cantor si talia facit, desinat aut communione privetur: Similiter etiam laicus. Likewise in c. Clerici de vita et honore. Clericus dicitur: Ad aleas etc. taxillos non ludant, nec hujus-modi ludis intersint: Item in c. Inter dialectos. Of Excess.

Prat. The Pontiff declared that it was manifestly unfitting for a cleric to be an actor in aleatory games, and consequently he entirely condemned such a custom among clerics, calling it wicked and a corruption. Moreover, si contrà factum fuerit, nulla sequatur condemnatio (id est victi ad solvendum), sed solutum reddatur, et actionibus competentibus repetatur ab iis qui dederunt. The same is sanctioned in the books 1 and 3 of the Decretals on Aleators. The same is established by Spanish law with regard to gamblers regarding credited money; see.

Salm de Hinc videndum, an et quomodo peccent Laici; Clerici, Religiosi, et Episcopi, aleis ludentes. And concerning what pertains to the Laicos, it is common and certain between the Doctors that such games 'should not be forbidden to them under a grave prohibition,' as Bus. holds in l. 1, c. 8, dub. 25 n. 5, 31 n. 9, 5to. Hurt. cod. tit. D. 8. diss. et Dianap.: 7 tr. 8 Res 2 cum aliis communiter. But it is most probable with Bus., that in regard to the aforementioned laws, laymen should not even go so far as to sin, as they say in 2 c. 26 n. 6 c. 6 et Sa.; 3 p. 2 n. 1086 Quia (as the authors of the aforementioned preface state) civil laws prohibiting certain actions obligate laymen only to punishment, not however to guilt; for there is given there to the injured party an action for recovery of what has been lost, as stated in d. l.

Of alms, as was said above. The canon cited by the Bishop is commonly held to have its customarily derogated application concerning laics, as the Decrees state infra note 895. I said, with regard to the referred-to laws, namely whether the laity who play primarily for profit commit venial sins? They deny it from the ap. Note n. 4.

Because it is not a sin to order a means to an useful end; therefore, if honest profit is useful, playing for the sake of that is guiltless. But more probab ly, given the precise citations, I think that it should not be excused from venial fault according to P. p. 601 n. 3, because (as D. 4 teaches) every negotiation subservient to profit made for its own sake has some turpitude. That is clearly established from chapter Quicumque, 14 Qu. 4, where it is said: "Whoever at the time of harvest or vintage, not out of necessity but through greed, sells his grain." We call this dishonorable profit. But there is doubt whether playing a game principally for profit commits a grave sin?

They affirm Sylvius' version. Doubt arises concerning whether one sins gravely by playing a game primarily for profit? Sylv. affirms this in question 4 and article 9, chapter 168 of the libellus. III. Treatise. V.

On the Seventh Commandment of the Decalogue, chapter R, section 1, and Cajetan. S. l. c. c. 8 n. 7. Because (as they say), let the intention of gain not be mortal when the game is illicit; yet it is mortal when the game is prohibited: for in that case the player intends to wrong his neighbor by an unlawful means. But commonly and justly do Molinists deny that there is a grave sin committed therein. D. 5 I o. Lugo D. 3 i n. 5.

Injury. D. 8, difference 2, and c. R. 1 with Val. Reply and commonly. Reason, because the intention of gain cannot be mortal when the game is such that dominion can validly be transferred through it, since then the player intends licit gain by means of a lawful medium, although the game, or mode of gaining, may be illicit. But Lugo and Diana, probably say that it is not even venial if profit is intended for a legitimate end.

Question 2. Whether the victor is bound to restore the gain before the judgment of the Judge in such a game? They affirm Syllogism. St. Anthony. Art. 1 n. 2 ex dict. l. Of debts, where it is said that if the debtor is released, he shall be discharged and the competent actions shall be repeated.

But it must be denied with Busemburg and the common opinion, which they hold in III lib. IV cap. XXI n. 3. Lug. D. 3 i n. 6o. . 6 n. 82. Cross L. 3

p. 2 n. 1086. c. n. 3 (qui merito dicit hanc sententiam omnino tenendam) 26 n. 17 qui vocat veram cum Sot. Mol.

Med. Covarr. and others commonly. Reason, because (as is evident from the words of the Law, as stated above), there it is not declared a vitiated contract, but only a victor's action is granted for recovery. And the same is said in number sixty-seven regarding the Spanish law forbidding a game for credit. They nevertheless add that it holds in the case where the victor freely releases himself, knowing that he is not bound by this; But Lugo n. 67. c. R. 24 et Dic. ap.

Croix l. c. n. 1087 probabiliter dicunt victorem posse retinere lucratum, etiamsi victus ignoraverit posse negari solutionem: quia recepit ex contractu valido, et victus jam habebat obligationem naturalem solvendi, licet ex jure positivo potuisset exceptionem opponere. Dub. 3. an, si victor impediat, ne judex eum obliget ad restitutionem, teneatur restituere? It is answered affirmatively if he impedes either by violence or by fraud; otherwise, if by some other means. It is commonly held that Lug. D. 31 n. 62. . 2 n. 2.

Because the victor is not bound to restore, except after the sentence. Moreover, however, a victor, when questioned by the judge, is bound to confess whatever gain he has unjustly acquired through play, and whether he is otherwise obligated to restore it? They deny that if this be proven, it should at least be fully established. Reason, because when the victor is examined criminally, so that he may be punished by deprivation of gain as a penalty for the crime, it does not bind him to confess, when the crime is hidden. But more probable is Lugo n. 64: for if it were penal, restitution would not be made to the victor, since he himself would also have been a participant in the offense, but rather to the Fisc or to the poor.

The rule, however, that a defendant is not bound to confess an occult truth to the judge interrogating him unless there is semiplena probation, as taught by c. and c. 31 n. 9 and Lugo n. 63, holds only in criminal cases, not in civil ones. Dub. 4. an qui ludit ludo vetito cum animo repræsentandi in judicio possit retinere lucratum? They deny it; but more probab ly they affirm it: Lugo D. 31 n. 53. . 1 c. 8 dub. 5 n. 1 et Sporer p. 84. Reason, because on one side the contract was validly concluded, and since the intention of not fulfilling it minimally irritates the contract; and on the other hand, the contract remains equitable, for an exception to discharge either party always applied. Hence, si hunc lucretur, retinet ex contractu validore: si vero perdat, negat solutionem, utiens beneficio quod lex ipsa tribuit.

Question 5. whether he who has lost in a forbidden game is bound to pay according to the contract: Lib. 170. III. Treatise. V. Concerning the Seventh Commandment of the Decalogue, truly?

The first sentiment is very probable and affirming, and this opinion is held by Sayr. l. 9 c. 22 n. 21, likewise according to 22 n. 30 et. Reason, because by natural law the contract was valid, and therefore it is bound to be held in force until a judicial exception is opposed or restitution is petitioned. The second however opinion more common and more probable denies this, and this opinion hold Sanch Dec. l. 2 c. 13 n. 144. . 2 c. 26 n. 24. Lugo Dict. D. 22 n. 300 et D. 31 n. 70. . 9 ar. 4 n. 1. tract. 6 n. 7. . et . l. c. et c. 1 n. 71 ac Alea- rum C. de At frustra (ajunt) diceretur ludentem non posse cogi ad solvendum, si in foro conscientiae alias cogeretur.

But this reason would prove that what wins by such a trick should be held to have gained profitably before the judgment, because if the victor had no natural obligation to pay, the loser would unjustly recover; but this is contradicted by common opinion, which we saw above in dub. 2. Therefore, the reason is more potent, because the law, unless it removes the natural obligation, although it be broad in punishment for the victor, yet also in favor of the vanquished gives a right to the latter to defend himself by exception or repetition of the discharge; and thus it even gives a right absolutely not to pay. For what is he bound to pay if he can immediately repeat the discharge? This is confirmed from the law. Creditari. 5 de Pacis, ubi dicitur: Frustra solvitur quod statim repetendum est. That is considered probable by Lugo, D. 3 n. 3o2 (contra Mol.) even if the defeated party lacks the courage to accept or repudiate in court what should be immediately repeated. - 800 Dub. 6 an: If both parties renounce the benefit of the law, may the defeated party deny the release?

Correctly affirming 31 n. 65, if they have renounced without a vow, because the benefit of the law is given for the common good, and therefore the withdrawal of those playing is invalid. Nevertheless Lugo observes in the same place, that after the solution, the renunciation would seem valid and irrevocable; because it would be a new gratuitous donation independent from the game. If however the gamblers renounced the benefit with a vow, correctly distinguished c. et dicit, that if they merely vowed to be solvable, they would indeed be bound to solve, but afterwards could repeat the dissolution. Accordingly, if they have sworn not to repeat it; for although the game is forbidden, it has been permitted and lawful to lose such a game by chance and not to repeat that loss; hence such a vow stands valid, as far as concerns a matter licit, as we shall see in the following question against Salmant. It is asked, whether in such a case the

conquered one can petition the Prelate for relaxation of the oath?

Some affirm this among the Sedentes; but truly it is denied. C. with Molinaeus, because here a valid contract intervenes, which does not intervene in a pact for the repayment of usury. They say however, 8 n. 6. But in our case it must be noted that although the law prohibits this game, it nevertheless permits and allows the resolution of a lost contract: Hence it is concluded that there would have been no vow to play a prohibited game, because the game is prohibited and contrary to the common good; but on the other hand, there would have been a vow to resolve a lost contract, because this is not prohibited by law. Ques. 7. Whether he who has already discharged his obligation can secretly compensate himself for what has been released? Adrian affirms, and Angles thinks it probable according to . 1 c. 8 dub. 2 n. 5.

But it must absolutely be held in opposition to this: Sporer, tr. 6, n. 82, and Lugo, D. 31, 172 lib. III. Treatise. V. On the Seventh Commandment with Solomon. Reason, because the lord's money, having already been validly transferred elsewhere, cannot be reclaimed except in the presence of a judge; But what constitutes a claim for recovery, having been released through petitioning for rescission of the contract, and the victor renounce restoring it?

Consider the aforementioned [n. 717. 84]. Dub. 8. etultimo, utrum si victus ficte minitatur in judicio repetere solutum possit titulo transactionis aliquid recipere a victore? They deny it, Molina in his work on day 514, note 13, and Lugo in Decretum 13, note 72, together with Salas, and more extensively in Decretum 27, note 167, because (as they say) that contract of transaction was made through the cause of dolo, namely through fear which truly did not exist due to a lack of intention to repeat; and therefore the victor can receive nothing, and if he does receive, he is bound to restore. But it is more probable that they are able to receive . 2 c. 17 n. 42. l. 4 D. q. 2 D. 1 p. 10 n. 5. 4 n. 24 et 3 p. 2 n. 1086. Reason, because although the victor does not have an intention, he nevertheless has the power to reclaim; because he is deprived by the impostor through such a transaction; and the victor truly does not give, so as to lay aside that intention, but so as to yield to the right of reclamation, insofar as he truly yields. 85 II.

As regards clerics, however, the matter stands otherwise than it does as regards laics. But it should be noted that the Canons prohibit from engaging in dice games solely the Clerics constituted in Major Orders and Beneficiaries, as commonly stated by Lugo de Just. D. 31 n. 12 cum. Cons. l. 1 c. 8 dub. 28 n. 8 cum Ratio, quia (ut ajunt) Canon Episcopus in

principio relatus, quoad alios Clericos saltem ex consuetudine derogatus est sicut quoad Communi. 86 At dubitatur, i. an praedicti Clerici in Sacris aut Beneficiati peccent graviter, aleis ludendo frequenter et in magna quantitate? The reason for this is because the aforementioned laws either from the beginning did not oblige except for punishment, or were abrogated by custom; and they cite in support of their opinion Apud Dianam; but Sanchez d. dub. 28. n. 7. e. 29 n. 6. in 7.

Precedentium caput sextum nuntium octogesimum. Mol. D. 512 et alii infra citandi: Ratio; tum quia juxta Canones (ut pro certo habet 9 R. 3) damnantur de peccato mortali Clerici publicè et frequenter aleis ludentes; tum quia, licet Canones prohibentes hodie non sint in tota sua observantia (ut concedunt cc. ac Fill. tr. 37 c. 4 n. 59) tamen non sunt omnino aboliti, cum lusus alearum de ipso jure naturali notabiliter dedeceat satum ecclesiam sticum, ut mox dicemus dubio sequenti.: Dub. 2 aq peccent graviter Clerici frequentare lu- 897 dentes aleis, etsi in parva quantitate? The first proposition denies what South holds. Game, q. 4. . Anton. dub. 28 n. 6.

The reason for these is because the frequency of playing, although it aggravates the sin, nevertheless does not change its species, so as to make a venial sin mortal. But the commonest opinion, which we follow, and Cajetan holds, affirms this, namely, article 3, question 168, dubium 3. The argument against it is that although frequent playing aggravates the sin, nevertheless it does not change its species so as to make a venial sin mortal. Ludus, n. 4. Arm. eod. verh. §. 4. 8 diff. 3. . 6. . c. n. 7 cum Alcoz et Palac. 3 tr. 4 c. 21 n. 1.

Mol. D. 512. c. n. 80 et 3 et p. 4. R. 183 where he calls this opinion common, he also says that one should not depart from it. The same is felt by Bus., as above (namely however, let the play not only be frequented, but also for a long time, as they also speak in 8 Ex 4 n. 77). Reason, because, as we have already indicated above and as the authorities teach, such frequentation of the play is very much to the discredit of the Ministers of the Church according to the law of nature. Neither can custom excuse this, because, as the Pontiff declared in c. 174 Lib.

III. Treatise. V. Of the Seventh Commandment of the Decalogue. Among the beloved, concerning Life and honor.

Such a clerical custom, as a genuine corruption, is at all times to be condemned and removed. What kind of this frequency of mortal sin is? Bordon thinks it fitting to play once in a week, but Roncaglia considers

that excessively lax. But N. 6 and Wiganct at loco citato consider that clerics playing for recreation a short time, although frequently, should not be considered as sinning gravely, unless their own statutes prohibit it. Dub. 3 asks whether clergymen who play at ale with great frequency but not often commit grave sin? They affirm Sporer at chapter d. c. section i number 80 and adhere to Mol.

D. 512 et alii apud 31 n. ii et consentit c. 21 n. i citans nisi fiat publicè et cum scandalo: Dicit enim loquentes tantùm de publíco aleatore et his lusibus dedito. Ex his omnibus dico I non peccare graviter Clericos qui rarò moderatè et privatim sinè scandalo aleis ludunt. But probably neither venially nor mortally, if they play for recreation's sake in a place where the aforementioned Canons are not rigidly observed, as Molini say. D. 512. Laym l. c. n. 2. 9 R. 3 in fin. cum Dic. et Amic. 900 Dico II. I praefatas sententias, quæ damnant de mortali Clericos aleis ludefites, non procedere in lu- dis chartarum, qui non sunt mere sortis seu fortu- næ. Others confuse the game of dice with every game of cards: But this is unjustly; for truly alea, as the Masters of Latin Grammar teach, is the name comprehending solely games of chance, which do not depend on art but entirely upon fortune, and such are the games of dice, of tesserae, and similar ones.

Hence I say that for those games of cards which totally depend on chance, such as are commonly called games of chance, namely Bassetta, primiera, and similar ones, these aforementioned judgments hold; but not for others which are both of skill and chance, such as are said to be the cases with Ombre, tressatte, and similar ones. For these indeed I very probably hold with the Author of the Little Book, whose title (as above, namely not to sin greatly by clerics playing such games unless there were some special prohibition somewhere or scandal). Concerning which Molina has moreover rightly observed. D: 512 it is a thing to be considered what sort of person it is—whether one of great or small estimation; for clerics who do not lead such an exemplary life really do not cause a grave scandal if they are frequently seen engaged in such indiscretions, provided that they do not neglect their own proper ministries; nay, they do not offer any scandal at all if they do this merely for the sake of recreation. And these may truly be said to be excused by the present and universal custom, which certainly differs from that ancient strict discipline of the primitive Church.

III: Concerning Religious persons, Lugo says 501 D. 31 n. 12. 28 n. 9 et Mol. D. 512 in fin. ipsos propter eorum statum et scandaluin aliorum facilius posse graviter peccare aleis sive taxillis ludendo. Whereupon Roncaglia says in c. 1 Question 3 R. 2 and Bann. according to Lugo n. 12, that Reformed Religious, such as Capuccini, Jesuitae, Discalcenti, and

similar ones, if they sin when once they engage in such games, will have sinned. And all the more is this to be said with Psalm 95 concerning him who shall open such a way by these religions for those who play thus: Roncaglia however in loco citato et sed in loco citato with the Saint say that, after erasing scandal and precept: on the contrary, such Religious men may be excused from mortal sin if they play in small measure; and even from venial sin if they play for a reasonable cause; as for example: to relieve an invalid or a sad companion; and this seems probable to me, speaking of games of parchment not mere dice, according to what we said above about clerics. They add; 176 Lab.

III. Treatise. V. Concerning the Seventh Commandment, I do not agree with this, because such recreation per se dishonors the religious state; nor can custom make such indecency seem proper. How much, however, can a Religious expose himself to play?

The game of dice is not specially prohibited by the Rule, D. 3 n. 144. Ableth tom. C. 18 n. 655. 7 c. 19 n. 79 cum . D. 520 etc., it is opined that he may be habilitated to expose five, provided that he has a hundred gold coins, and that in the same year he does not incur expenses for other non-essential uses. Others finally, as IV.

And finally concerning what pertains to Bishops, if they indulge in games, since this greatly derogates from the episcopal state, they can hardly be excused by a mortal, as Sotus and Salzed say in Sanchez, Cons., l. 1, c. 8, dub. 28 n. 5, who notes in n. 9 with Alcoz that they are absolutely condemned for a grave sin unless they do so to recreate the sick. Moreover, on account of this or similar reason, Alcoz., according to Lugo, D. 31 n. 12, says that a Bishop sins mortally who plays once. But (with precise circumstances) Lugo thinks this too severe: whereas Sanchez excuses him from mortal sin when, according to Methodus et 9 R. 4, he plays once for recreation; Salas, however, excused him even from venial sin in the same case according to Lugo l.c. However, I think it difficult to excuse even a Bishop who once plays at chance for a jest from a serious sin; Just so, I also hold that if he frequently engages in other games of similar chance, they are by no means entirely fortuitous. Now as for clerics or religious who sin mortally by assisting and inspecting those who play at dice?

This indeed is prohibited, as we have seen, in o. Clerics, in the Life [or similar work], where it is prescribed to them, let them not interfere with such games. However, commonly they deny this, that in this themselves they commit a mortal sin, unless they were the cause of a mortal game, or neglected to correct those who indulge therein, or unless from such a game

as is mortal they took pleasure; otherwise, if they assisted merely for the sake of enjoying the industry or fortune of the players. Thus, in lib. 1 cap. 8 quaest. 29 cum ac Qua de re improbabiliter sentit Bartholom. de S. Fausto apud Pii hoc interdicitur iis sub poena excommuni-cationis; Sed censeo praefatum Auctorem quod hoc in magnum irrepsisse errorem, nam meminit verò de ea paulò post quaest. 31 n. 5 et 12. Here it is observed that the Bull of St. Pius speaks only of clerics and religious assisting in the agitations of bulls, not however of games of chance.

Bishops, autem, qui haec lusibua ex proposito et frequenter assistunt, difficulter etiam excusari possunt a peccato scandali gravis. ## DUBIUM XIV. ### What is the contract of a Society? 904 How is a society formed? 905 About the requisites to a society. What comes under the name of Damnum? What comes under the name of Expenses? And whether a partner can deduct expenses of travel for himself? 907 Qu. I. Is capital to be divided, if one contributes money, and the other labor?

What. II. How is the profit then to be divided? What. III.

Does the damage of the lot always pertain to the Lord? What. IV. Is it permissible for a contract to make the loss of chance common? What.

V. When is it considered that a partnership has been formed among the Brothers? And what must be observed in it? When. VI. In what ways may a partnership be terminated? 908 Can profit be claimed through three contracts while preserving the capital? 909 On Animal Partnership.

Qu. By what modes may the society be terminated? If a rustic sells money to him so that he may buy oxen for a partnership, and that man uses it for something else, can he demand profit? Qu. II.

Is it permissible a contract? 178 Lib. III. Treatise. V. Concerning the Seventh Commandment of the Decalogue: is it fulfilled by supplying dead sheep, or in the meantime by dividing the fruits?

Qu. III. Is a contract permissible for the sake of saving the head? 910 May a transaction between a son and his father be justified? Wherefore, considering what reason and the nature of justice here require, these cases are resolved. » 1.

It should be more profitable for him who contributes money and his labor than for him who contributes either money alone or labor alone. 2. Plus lucrari debet, qui conferre pecuniam et operam suam, quam qui vel

pecuniam vel solam operam solvere. Capital, sive sortem quam quiscumque contribuit, si pereat casu vel culpâ sociorum levissimâ, contribuenti perit. Where the distinction is between this contract and a loan, because in a loan alien property is given, and its dominion is transferred to the borrower, whose periculum and damnum it is if it perish by chance; whereas in partnership, although one contributes property, he does not entirely alienate it; and just as profit and advantage pertain to him, so too peril and damage. Therefore, three are the principal lawful conditions of partnership.

I. That a society may be formed in an honest transaction. II. That the damage of chance may pertain solely to the lord. III.

That equality may be preserved, namely, that the estimation of effort corresponds equitably to the use of another's money. See c. 3 n. 96. q. 9 art. 3 n. 2: and similar passages. IV. The condition is that each associate bear the burden of penalties and expenses. By the term damages are meant only those damages which arise solely from the perspective of the society, for example, if merchandise itself, which is the cause of custody, transfer, or acquisition, is torn away by robbers as stated in l.

When two. §. Damages, where it is said: Recognize the part of the damage (the other half) both in money, as well as in things other than money, which the associate would not have brought with him, unless he had gone forth for things commonly called to be purchased for common use. Non tamen veniunt damna, quae remotè occasione societatis socius patitur, puta, si occupatus in societate prætermittat acquirere legatum sibi relictum, negotiis domùs suæ providere, etc., ita Bon. de Contr. D. 3 q. 6 p. 4 n. 1. 1 p. 523 et alii, ex legibus ff. eodem titulo ubi id expressè sancitur. Nor do damages come which are encountered by the associate through the utility of his own personal affairs and not through contemplation of the society, as is read in the same section. The associate, shortly after cited. Si autem causa societatis vulneraret socius, vel ejus servus a latronibus, tunc solae expensæ curandi debent esse communes, ex predicta l.

When two. § Damages. By the name of expenses come expenditures for travel, conveyance, tolls, preservation of goods; and so forth. But there is doubt whether a traveling associate could deduct all expenses of travel on account of the society? They deny that the traveling partner can derive all expenses of the journey by reason of the partnership. Society, question 12. Eng. idem v. n. 12 item P. 3 q. 6 p. 4 n. 4 et probabile putat 2 c. 25 n. 35.

Reason, because the society is not bound to bear expenses which another

associate has incurred at home, but only those in which it itself is damaged by reason of the partnership. Others however, as Roncaglia in question 2. Response 2. Much. D. 418 n. 2. . 2 c. 25 n. 35. n. 283 et Bonac. l. 2 cum Reg. et Salon concedunt posse integros deducere; modò aliter non sit conventum, et diversa non sit consuetudo; et probant ex l.

If a brother. § If anyone, for the sake of his associate, where it is said: the associate in viaticum, and in the conveyance of stables, horses, waggons, or seed, or measures of grain (societati), shall justly impute it. Wherefore, since the law absolutely permits the associate to receive viaticum along with other expenses, it does not appear why he should not receive them completely. This second sense seems to be more probable, as it conforms more closely to the law. 180 Lib. III. Treatise.

V. Of the Seventh Commandment of the Decalogue. But since I do not dare to call the first improbable, therefore I conclude that, if a trustworthy associate has applied expenses to his account, he can retain them; whereas, if not in good faith but in bad faith; because, as we said in n. 761 v. Question. II. With an opinion that is probable but not certain, possession cannot be commenced. He who questions.

If one contributes money to a partnership and another contributes labor, at the end of the partnership should the capital with which the money is owed be returned to the lord of the money before all else? The first opinion, which the Glossa holds in lib. 1. C. for the sake of the associate, and Bart. Acurs., tr. 33. D. 8. p. 3. n. 1 negates, and does not merely say that the profit is to be divided between the two associates, but also the lot. Reason, because in a partnership everything should be communicated, hence just as the merchant performs his common service, so too another should perform his common money.

Others say that just as with the lord it pertains first to the capital and then to its profit; so too with the merchant it pertains first to the price of his industry and then to a part of the profit, which coincides with the same thing. However, the second true opinion, which they hold, is cited in note 2, chapter 9, question 3, article 1 with Baldassarre, and by Saint Thomas in note 24. Petroc. tom. 2 p. 405. Bon. de Contr. Doctor 3, page 3, note 3.

Cabbas. l. 6 c. 13 n. 3. Escob. l. 41 c. 12 dub, 1 n. 82.: 1. From the Bull of Sixtus V. Extra-vigilias. Detestable. § 2. where it is thus established: If in a finite society capital exists, that which has been brought into the society shall be restored to him, unless the recipient partner has been communicated with regard to it, or otherwise there has been a legitimate

agreement between the contracting parties.

It is proven by reason 2, because money given to a partnership does not become common among the partners as regards dominion or property, but only as regards use or utility, as stated in 2 q. 78 ar. 2 ad 5, where the Doctor says: He who commits his money or merchandise to a merchant or artisan by way of some kind of partnership does not transfer the dominion of his money to him, but it remains his; so that when the merchant himself takes risk with regard to it in business, or the artisan works with it. Just as if the money perishes, the master perishes; so too, if there is a remainder, it belongs to him. It does not hinder to say that in a partnership both industry and money may be held in common; for it is answered as we have already indicated, that in a partnership property in money is not communicated, but only use or utility; whence it suffices that one furnishes the industry while the other supplies the utility of the money. And thus, if in a terminated partnership only the capital remains, it will not be injustice if all is restored to the partner; for as the associate loses the profit of his own industry, so this one loses the profit of the use of his money, which being exposed to commerce and well-suited for yielding fruit, adequately compensates him. And thus even what others suppose is not true, namely that one furnishes labor and another money; For truly on one side labor is furnished, and on the other not money but rather the convenience of money is provided; Wherefore it is not the wage of his labor nor the profit thereof that is due to the merchant; but only half the profit regards him, as the fruit of his industry, and half regards the master of the venture, so that the fruit of the convenience of his money, which is exposed to negotiation, always remains safe with the master's capital.

Accordingly, si quis ad negotium confert navim, et alter operam, completo negotio, navis quidem integra debetur domino, cum tantum usus navis sit collatus; et lucrum deinde est dividendum. Question. II. By the lot of the lord, how they divide among themselves so that there may be profit? In hoc valde obscurè et confusè D.D. loquuntur.

Others, according to 2 c. 25 n. 9. 2 n. 1101., say that if one person contributes a hundred gold coins and another an equivalent amount of labor, then the profit should be divided equally between the capital and the principal, following the first opinion drawn from the preceding question. Others, however, as Cab. l. 6 c. 13 n. 6 with and P. Pace tantorum Depart- ments, hold that neither of the aforementioned opinions is equitable; for the first one has already more equitably distributed the labor, as we have said in Qu. First secondly Chapter eighty-two Section one hundred and eight. III. Treatise.

V. Of the Seventh Commandment of the Decalogue, and money given in excess. Hence altogether it seems that I must say this: according to Decretals 8, p. 3, n. 2 and 3, with reference to the Reply, that the profit should be divided in proportion, considering on one side the value of industry, and on the other the contribution given by money for the provision of convenience, according to the common estimation of profit which is commonly held for money applied to commerce. Hence it is well to be adverted to with regard to the same, according to c. R. 1 and Sporer de 7. 5i, that sometimes the industry of a merchant may be more valuable than the use of money; and then the profit should be distributed proportionally: so that at times it will be licit for a contract to divide even the capital, after the profit has been equitably distributed in interim, as is done by custom in many places in animal partnerships, as Cabassus testifies in loco citato. Furthermore, it must also be adverted to that sometimes the value of industry may decrease because of the multitude of workers seeking employment in the partnership; whereby it may happen that more contracts will be excused which at first sight seem unjust, since the industry of the workers contributed to the partnership according to common custom is not commonly esteemed there as being greater. On the contrary, it would be altogether unjust a pact by which, with wicked goods, the capital belonging to the master is restored to him first during the partnership, and thereafter what remains is divided equally; for although the fruits of the trade that he does not receive meanwhile are compensated by half the risk, which he will finally take at the end of the partnership, yet the placing of money diminishes the danger of his capital from the beginning, and the merchant, if later he should perish, is subjected to the risk of the venture and profit; thus it is most fitting.

III. If the loss from the lottery be common, when one furnishes the money and the other the labor, what happens to the money if it is lost by chance? The first opinion, which the Major holds in 4.1, C. de Societo, and others at 9 c. 3 q. 3, distinguishes thus: If the sortilege is lost after the partner has put forth his labor, then the entire damage regards the penance of the money; But if the money is lost before he assists the partners with his labor, then the damage should be common. Reason, as they say, because then, when one equally contributes labor and the other money, all become common profits and losses. However, the second and true opinion; which is held by the Glossa in l.

If they were not. ff. For a partner. Ang. v. Society, n. 17. Sylvest. in the same work, volume 5, question 6, chapter on the topic with Bartol.

Baldo, S. Ratio, quia non est verum, quod cum collata pecunia etiam sors conferatur; conciditur enim tantum commoditas pecuniæ, ut supra diximus

in questu. I. Wherefore, since by virtue of the initial contract perishing through chance, the Lord of that does not confer any commodity of money, so likewise another is bound to nothing if he does not bestow any effort. And thus we said conversely, that after the dissolution of the partnership, the share in the money shall first be rendered to the lord, and afterwards the profit, if any remains, shall be divided among the partners. Question.

IV. May a contract be permitted, which, by chance being nullified, would cause common damage between the party providing the money and the merchant? Response: Si pactum sit sic ut si- cùt damnum, ità et sors sit communis, tunc licitum est; quia sicut ponens operam habet commodum, ut ipsi tradatur media pars sortis, quamvis sors de jure tota ad dominum aspectet, sic æquum est ut sorte pereunte ipse subeat mediam partem damni, licet damnum sortis ad ipsum non pertineat. Thus the Rule in praeterea practica tres et novem caput tres quaestionem quatuor cum aliis. Si vero pactum est, ut sors non sit communis, commune vero sit damnum, tunc certè illicitum est, et injustum, cum nulla hic detur justa recompensatio.

See. I. c. Question NoneV. At what time is it considered a contracted society among Brothers? And what must be observed in it? Response: Societas non censetur facta, nisi expressè vel tacitè ex conjecturis id habeatur; Unde, non quia Fratres habent patrimonium indivisum et de com 184 Lib. III.

Treatise. V. From the Eighth Precept of the Decalogue: If the table is supplied by the Seventh Preceptor, among themselves a society is contracted, unless all in some business be engaged; or unless one transacts the business and others contribute their goods, According to it 9 c. 19.9.1. Mol. D.:421 n. 6.

Goodness. D. 3 question 6 paragraph 7 number 2 with chapter 4 question 1. That is presumed to be clearer if all things beneficial for each one are brought together in common by all. This nevertheless is understood when each one contributes also his own particular goods, besides common ones; otherwise, if only one contributes his own particular goods, such as profits from some office or art, and others alone contribute common goods: then he can compensate himself for them, as the questioner of Azorius says in quæst. 5 when he says that thus it is even so, if one contributes a greater labor (says he), he can receive more according to the estimation of his labor. If however some absent Brother should transact business under the common name with common goods, it is understood to have a partnership, so long as he is admonished by other Brothers that they themselves wish to

make a division; and then even in regard to partnerships for transactions already begun, it ceases; whereas on the contrary some others do not.

It is asked VI. In what ways may the society be terminated? It is terminated either at the completion of the time when the society has been constituted, or by the conclusion of the negotiation, according to law. Actions §: Item. ff. pro socio II. per consensum mutuandi sociorum. To this, however, a tacit consensus is also sufficient, namely, if one of the associates begins to transact separately for himself, l.

Therefore, ff. sod. tit. Si vero quis socio invito renuntiet ante tempus, tenetur ad interesse. Receive 1. If this be necessary for the public good, namely, that if a partner should be absent on account of the State, no other suitable substitute can be readily found. 2. When there is no hope of obtaining that for which the society was formed.

When the other does not keep the agreements. 4. When another causes a serious damage to the society. These nevertheless ought to be certain, otherwise possession is reckoned on account of the observance of the contract. See Bonac. de Contr. Doctor tertium quarto sexto problematica universalis secunda.

III. The society is terminated by the death of another partner and does not pass to the heirs; And this, even if it has been agreed that the society shall pass to the merchant's heirs, according to l. True, § In heredem. ff. pro socio. Reason, because in a partnership industry is chosen by the person; but the industry of the heir is unknown. However, Bonac. 8. 3 excludes this unless the pact is confirmed by a vow: just as a society does not terminate in matters commenced; nor regarding revenues or other public affairs, as Mol. states.

D. 414 and Bonac. ibid. with IV. Society is also terminated by civil death, that is to say, by exile, or by the solemn profession of the associate, according to l. True §. end. ff. same. V. It is concluded if the associate labors under poverty or infirmity; or is cast into prison and cannot provide the promised money or labor, or if the given money perishes, even though the associate has another which he can contribute.

Item, si res ita sint mutatae, ut societas non sit amplius idonea, ex hoc l. True, §. fin. 3. However, it can also happen in this contract that 908 someone justly preserves his own indemnity and exceeds a certain profit, if indeed to the contract of partnership two others are added, an assurance and a sale, of which such an example is given: florenos, for instance, hope

that he will annually earn 300, half of whose profit; or rather, what you owe according to the law of society with your own lot; but since it should also pertain to you of the same lot's peril, so that you yourself take on this peril and secure his lot, in compensation for this burden, you leave him a greater part of the hoped-for profit, so that two parts of the profit belong to himself, and one-third to you. And again, because this hope of profit is uncertain, therefore you also sell this part of the hoped-for profit, namely 100 florins in expectation, for either 50 or 60 annually certain, and thus finally you make this profit and keep your fortune indemnified.

See. This is the famous question regarding the three contracts: whether a certain profit can be claimed through them while preserving the capital? Lib. 186. III. Treatise. V.

Of the Seventh Commandment of the Decalogue. The first proposition denies what Soto holds in Book 6, Question 6, Article 2. Merbes. tom. 1 p. 348. Hab. tom. 4 p. 317. P. Conc. tom. 7 p. 489. 1 p. 524 (quaque tamen p. 541 admittit contractum duplicem, ubi sola sors, vel solum lucrum assecuratur, in qua etiam Cabass. l. 6 c. 13 n. 1 consentiat.), item Bann.

Repugnans et Mercadante ad paginam 3, librum 9, capitulum 4, quaestio 5. Reason, because through such contract adjuncts, the contract of association is destroyed; for it is part of its nature that money be in danger of gain and loss, or at least one of them, according to the opinion of Cabassutius and Tournetey as stated above: For when the contract of association is destroyed, there is no just title from which he can demand his profit from his own money; and then he would demand a profit from a loan into which the association entered, with all danger of loss and gain cast aside for the recipient of the money. Nor does it hinder to say that if such contracts are added to this society with different persons, or at different times with the same associate, they would already persist; just as well if they occur at the same time and with the same associate: For the supporters of this first opinion respond that in those cases the society would continue to persist; but here the society is destroyed, and thus the foundation for deriving profit from it is lost. Furthermore, the aforementioned authors have safeguarded the opposite sentiment, which was already condemned by Sixtus V., who in his Bull Detestabilis, published in 1586 (in Bullario p. 154), thus states in § 1: We condemn and repudiate all contracts henceforth to be entered into, through which caution is taken for persons, monies, animals, or other goods of the society under pretext thereof, so that even if any loss should happen by fortuitous chance, the capital itself may always remain safe; or so that a certain quantity may be answered yearly or monthly during the duration of the society. And therefore it seems that our Most Sacred Persons have adhered

to this sentence.

Benedictus Pontifex. XIV in suo aureo libro de synodo, l. 7 c. 1 ubi dixit, quod licet haec quaestio indecisa remaneat, cum tamen plures et non obscuri nominis theologi posteriores tria captractum ab usura absoluerunt cap. III. Doubt. XIV. On Contracts. 167 turned it, but nevertheless may this same sentiment be deemed more fitting to the aforementioned Bull.

Another Bull of St. Pius V, in his Extravagants on Penalties, § 4 of Censures, said thus: We do not wish conventions directly or indirectly obligating, even cases fortuitous to hold for him who otherwise is not bound by the nature of the contract, in any way. The second opinion, more commonly defended, holds that this tripartite contract is licit, provided that there be no intention to defraud, and the associate who receives money shall absolutely be bound to apply it to the business; They hold thus: 2 c. 25 n. 13. 5 c. 41 n. 3. Lugo D. 30 n. 40. . 3 tract. 4 c. 18 n. 11. Bonac. Decretum 3, quaestio 3, treatise 11, note 2.

Escob. 1. 41 dub. 3 n. 88. Mazz. tom. 2 p. 161. . Mol. D. 416. Major. D. Parisin. et Sylv.

P. . and very probable he calls it; see also the libellus excused in Paris in the year 1745 with this title: Theological Examination on the Society of Lenten Loans, in which are verbatim reported the approbations of the three contracts edited by Academies and Theological Faculties of Cologne, Treves, Complutum, Salamanca, Ingolstadt, Friburgo-Bischofshofen, and concerning what regards the society in mutuum. Now, as for the first point, Navarr. and Lugo deny that, due to the risk conjectured in the partner, the partnership should be destroyed; just as in the case of a loan contract, although the risk of the thing fortuitously pertains by nature to the owner, yet upon making just compensation, a pact can be added such that the risk pertains to the borrower, as is stated in cap. 1 of Commod. Thus the loan contract is not destroyed; similarly in the case of a partnership contract, 188 Lib. III. Treatise. V.

Concerning the essence of the Seventh Commandment of the Decalogue, the Adversaries assert that it is not such that there should be a common danger of harm; rather, they should have proven this, since the contrary is clearly established by the law. If it were not. §. So. ff. For the partner, where it is said: "Thus to be able to join partnerships so that no part of damage be felt by either party, but a common profit be shared," Cassius thinks. They say that the essence of society is such that each part contributes something to the common use and profit, and that both parties

have equal shares in both advantages and disadvantages. Hence it comes about that from equal advantages there arise equal profits, and from equal disadvantages there arise equal dangers.

Hence, when one assumes the whole risk, securing the partner both in respect to sort and profit, although he feels a greater inconvenience, yet that is compensated by the benefit of greater gain; but on the contrary, by contributing money, even though he does not feel any inconvenience from the risk, he feels: nevertheless, an inconvenience from lesser gain, and thus this equality is established, from which primarily the partnership is constituted. How much profit can be demanded? Mag. Serra apud ; . Ad secundum vero fundamentum, nempe, quod societas eo casu transiret in mutuum, quia, conjecto in socium toto periculo sortis, tunc etiam in eum transferretur fortis dominium, ita ut sine alterius socii injuria posset ille pro libito de tali pecunia disponere; Diversa respondent fautores secundae sententiae. Lessius n. 30 et Azor loc. cit. (quamvis hic adhaereat sententiae contrariae) dicunt quod hujusmodi contractus licet societas non remaneret tamen non transiret in mutuum sed in aliam species contractus, nempe conductionis operum socii ut loquitur Lessius vel contractus innominati ut ait Azorius qui pro certo habet tunc contractum non transire in mutuum.

Others, however, as Lugo, Palaus, Escober, and Roncaglia respond, that despite the risk assumed by the partner, the partnership still persists: For (they say) in a loan, if the lender assumes the risk of the thing lent, he does not acquire its dominion, since the contract of lending remains; Likewise also in our case, the partner, by assuming the risk upon himself, does not acquire the dominion over the thing, just as in a loan; For although by paying off at the end of the contract the value of the thing and the profit agreed upon, he would not cause damage to the owner of the thing; yet if he did not apply the money to the business, then in that case (says Lugo n. 43) it could justly be compelled that he applied the money to the business. Likewise adds Lugo, that if such a socius were burdened with debts, even hypothecary ones, his heirs could not have an action against this money; and on the contrary, the lord himself could reclaim it as his own. But that this contract does not pass over into a loan is more strongly proven from the text above mentioned in L. Si non fuerit, ubi dicitur benè posse coiri societatem, ut suscepto a socio periculo alter nullam partem damni sentiat et tamen lucrum communicetur. As for the Bull of Sixtus V., many authors in response to this second opinion say: they state that the prohibition of the Bull is understood as applying to one who would force a partner to enter into such a contract by virtue of the very partnership itself; but Lugo, and they add, it is not illicit because each one can will another to be united in a contract when no injustice is present.

Hence Lugo n. 37. and others say that the Pontiff there disapproved of no other agreements except usurious ones; and thus Sixtus responded according to the oracle of living voice, reports Lugo ex Fillucio et Comitalo, who moreover testifies that he heard from P. Tuscum that Cardinals Toletus and S. Severina, to whom was entrusted the care of promulgating this Bull, had likewise affirmed the same. Item Lugo refert quamdam Decisionem Rotae Romane sub die tertio Junii millesimo sexcentesimo secundo ex Cherubino in Comp. Bull. Schol. 1. ubi decreta est haec Bulla comprehendere solos contractus usurarii de jure naturali vetitos, additis tamen majoribus poenis. Finally respond 190 Lib.

III. Treatise. V. Of the Seventh Commandment of the Decalogue and Malder. That it had either never been received, or that its use in this regard had been abrogated; for there is testimony to the fact that an unforgettably ancient custom was contracted in such a manner in Spain, Gaul, and Italy, and almost throughout the entire Church.

Regarding the Bull of Saint Pius V, see what other Fathers respond above at no. 849. This second opinion, fortified by so many authorities and reasons, is rightly not disapproved by them. Abelly de tertio tractatu secundo, pagina quadringentas undecim, quamvis sententiæ contrariæ adhaereant, et ego satis probabilem reputo. However, since it cannot be denied that such a contract involves a risk which the usurer's soul cannot afford; hence I deem it advisable to recommend the first opinion universally to all. 4.

The society likewise institutes strongly and lawfully in cattle. And sometimes indeed so, that both the very sheep themselves, which are entrusted for pasturing and nourishing another, as well as their profits and fruits, and even their losses and damages, become common to both giver and receiver: but sometimes in such a way that the dominion over the sheep regards only the giver; consequently also the danger or chance accident pertains solely to him; whereas the profits of wool and milk are for both. See. I. 3. T. 4. C. 20. It is part of the work to note some very useful prize concerning the practice of the Society, namely to prove that if it has perished through its own fault, it will be held responsible to restore the estimation thereof to the Lord; otherwise, as well they add, Continuator Tournely tom. 1 p. 535 with Sanbov. Puntas, et aliis.

This is clearly proven from the law with two sections fifty-two, chapter Damna, ff. For the associate, where if from robbers (the herd) has been stolen, damage to its own (that is, the herdsman's) results, because he who should have provided custody accepted the estimation. It is asked whether, if a rustic should petition you for money so that he may buy oxen and

apply them to trade, but nevertheless he does not buy oxen, but rather extinguishes his debt, whether you can demand your profit? Benignly distinguishes Roncaglia in Reg. 2. praxis, namely, si tu malà fide pecuniam dedisti, sciens illum non emp- turum boves, nihil exigere possis; nisi (intelligendum) aliundè pecuniam applicàsses alteri negotiationi, et de hoc illum monuisses. If, however, you gave money in good faith, he is bound to return to you the profit that accrues: and then he is bound to do so even if you did not warn him against such accruing profit.

Question 2: Whether it is licit to make a pact such that if some sheep die from a flock, they should be replaced by offspring born thereafter, and in the meantime the remaining offspring, wool, and cheese should be equally divided? They deny it, namely, in canon 11, no. 2, and in Sylvius, tom. 3, lib. gen., cap. 8, quæst. 12, because they say that in this equality is not preserved; but Filluicius, in treatise 38, cap. 6, n. 101, says that in this it stands according to the custom of places. Nevertheless, Filluicius says in his treatise 33, page 5, note 2, and . It does not matter that during this time the pastor should lose the profit from the offspring to be replaced, because even during this time the associate also loses a part of his own profit. Nevertheless, despite these objections, the first opinion seems entirely true to me, because although the profits of both are diminished at first and later compensated; yet the foetuses which are substituted would equally be divisible between the pastor and the lord: but when they are substituted, this certainly more accords with the advantage of the lord than of the pastor, since the lord has already compensated himself for his loss of profit, as has also the pastor; but meanwhile the lord always preserves a safe position which should have been diminished, and therefore equality would not be observed in the contract.

It is asked whether it is permissible for a contract called a partnership to be made with the aim of preserving the head, namely when animals are handed over to the pastor, provided that they will be returned to him safe and sound in the same number at the end of the partnership, and profit divided? By itself speaking, this contract is illicit, as rightly stated in Lib. 192. III. Treatise. V.

In the Third Article of the Third Question concerning the Seventh Commandment, chapter 8, book 9, question 10, with Sylvester and Regis: because the lot should remain in danger from the opponent, for its own dominion perishes at home. However, it is probable that it may be licit to add another contract of assurance, compensating thereby the pastor by a greater part of the fruits for the burden of such risk of fortune assumed: the same [is said] in the chapter with Sylvester and Angerius. Roncag. l. cit., cum q. 9 art. 3 n. 8; unde, si partem fructuum reddat, usurarii reddit.

But 3 and c. stand to be held by the judgment of experts, or by the practice of cautious men from any place; and he rightly adds that these contracts should be undertaken separately with more circumspection. To the Bull of Sixtus V.

Detestabilis, ubi contractus societatis per quos cavetur ut capitale semper domino salvum sit reprobantur, vide qua respondeant DD. citati dicto n. 908 v. To the aforementioned Bull. Well indeed did Roncalli observe it in the year three. In practice, it is certainly unjust to conclude a contract whereby the lord provides cattle valued according to their present value, with the agreement that if their value decreases upon termination of the partnership, the same value should be restored; because the deterioration of the thing belongs to the lord, unless this damage is otherwise compensated elsewhere. Si vero pactum esset adesset, ut in fine societatis non solum lucrum, sed etiam sors animalium dividenda sint cum socio, tunc necesse est quod pactum non sit injustum, ut si interim pereat caputale, pastor restituere teneatur domino medietatem sortis, prout dictum est supra vers.

Question. IV. Hic ultimè quæritur, an filius negotians cum Patre, ponente pecuniam, et ipse industria, possit accipere partem lucris suo labori et industriae corresponden-tem? Roncaglia affirms in Contr. v. 1'quæst.: In the case R. 2, that a son may conduct business under his own name; but if under the name of the Father, then he can receive only what the Father would give to another for such labor; and similarly he said: and Diana. However, in that case Roncaglia says that the Father can deduct from him the value of provisions which he no longer owes to the son, when he has wherewithal for his own sustenance; but since very properly Croix l. 3 p. 1 n. 1054 with Mol Moya et al. denies this, we hold that a son can petition the Father for a stipend for his labors and expenses in his house, as we have said in note 544 hence we say (contrary to Roncaglia and Bus.) that no way can that son secretly receive it without the consent of the Father. The Doubt XV. What is Assurance and Fiduciary? Response 1: An assurance contract is one by which anyone undertakes to bear the risk of another's property, either gratuitously or for a certain price, in order to compensate him if it perishes. Quod si gratis fiat, est gratuita promissio: si pretio, est quasi emptio, quas asse- curans vendit suam obligationem præstandi alteri rem ejus indemnem.

For its justice to be required, it is necessary that the outcome of the matter be uncertain for both, at least as far as their knowledge thereof extends; because otherwise equality would not be preserved, q. 9, p. 3, c. 28, d. 4, n. 24. ## Hence resolved. ## If the assured is certain that the thing is in safety, and seeks a price, he is bound to restore it. Ibidem Bonaventurae.

D. 3, q. 9, p. 3. * (Certum est: Si res nondum est in tuto, etiamsi privata scientia sciat non fore periculum, licere tamen accipere pretium ordinarii assecurationis, dicit. 8, p. 27. Because that obligation is esteemed more on account of ordinary perils, and the cause of hidden peril, which diminishes the danger but does not lessen the common estimation. The truth is that Bon. d. 3 q. 6 p. 3 n. 3 and Card. de Lugo d. 3 i sect. 7 more correctly deny it.

3. If one desires to secure his thing, he must certainly know that it has perished, and then he cannot bargain for its security. V. Si cupiens rem suam assecurari, certo sciat eam periisse, non potest pacisci de ejus assurcationis. Perdita. L. c. n. 25.

Response 2. A fidejussory contract is a contract by which one assumes another's obligation: it must be fulfilled if the principal debtor does not pay. Ita commun. Doct. Whereupon it is resolved.

1. It is permissible to receive a reward for a promise, even though no danger be feared; because of itself the reward is estimable. 22 d. 5. * (This is common among . 3. Even though to me it seems that whatever they say should be held as an assumption of such a burden proceeding from a estimable price, yet this is considered an onerous assumption. Women in fiduciary matters (at least if an oath is absent, and a public instrument is avoided) are not held bound, except so far as they can be conveniently discharged, and do not suffer want. V. c. cap. 28.

3. A fidejussor no se obliga más que el principal; y esta obligación, si es invalida, será también de la fidejussor. Regularmente un fidejussor no puede convenirse, a menos que, hecha la excusión del principal deudor, conste que éste no sea solvente. . c. Fill n. 153. » 5. The debtor is bound: for every damage resulting from his own fault and communicated to the surety; etc. See Io: Bon. 6. Debitor tenetur de omni damno sua culpà ac cedente fidejussori; etc. Vide ius: Bon.

By the suretyship of a Religious, effected through their own authority, the monastery is not obligated, except insofar as it is directed towards its own utility. See and . 29 n. 7. 7. He who has been commanded to stand surety for a person, against whom the danger of capital punishment hangs, if that person flees, is not liable in his stead, because it is not presumed that one would thus obligate oneself; rather, no one can be master of his own life, d. 7 n. 41. » 8.

If the debtor does not discharge his own culpability, he is bound by the

fidejussor who has discharged it on his behalf, to compensate not only the debt itself but also all damages and expenses. If however without culpability, for instance due to impotence, he does not pay, he seems to be bound only by the debt. » ## DUBIUM XVI. ### What is a pledge and a hypotheca? 913 What is a contract of pignus? 914 What if someone uses a pledge improperly? 915 When may pledges be used? 916 Concerning the contract of antichresis. « It differs, however, in that a pledge properly belongs to movable goods, whereas hypotheca belongs to immovables, Mol. 8.) * ### Wherefore resolved. » 1. Pignus non licet uti contra voluntatem donantis; quia est res aliena, ad securos tantum tradita, et non ad usum. Bon. l. cit. ex Mol.

Reg. etc. If, however, he makes use of it, for example, a horse or an acre of land, he should reckon the profit from its use as well as all other profits, if it be a productive thing, in the division, deducting expenses; otherwise he would commit usury, since the thing yields profit to its owner. The Lord, however, is presumed to consent, provided no damage accrues to him, for instance, if another makes use of a book and similar things. They cannot be pledged what cannot be sold, for example. The Church, Molina, Decree 530, Title 2, Chapter 28, Article 3. » Bon. l. c. » 3. Immovables, as well as precious movables dedicated to divine worship, such as chalices and vessels, etc., cannot be seized except in necessity, because then they can also be sold so that assistance may be given to the Church and to the needy.

See c. 4. Creditor, qui pignus a aliquo accepit, potest illud alteri oppignorare, sed non pro majore quantitate. Neither can he sell, unless the debtor is not solvent after two years, and even then only after prior warning. Certain ones, however, say that it can be sold after three warnings. V. . 3 t. 4 c. 30.

Bon. l. c. n. 9. Five. The same thing is not permitted to be pledged or given as security to many, unless it be sufficient for paying all, or later ones wait in regard to prior security, III q. 10 p. 1. 4. You inquire. What is a contract with Antichrist, Germany being his vassal. * (According to us, God forbid.) * Resp.

Is est, cum in contractu pignoris conveniat, ut creditor utatur pignore, v.g. agro ac fructus inde tamdiu lucretur, donec debitum ipsi restitutum sit. Wherefore concerning this from the aforementioned resolutions. » 1. This contract seems to be based upon Cajet. Sol. etc. » (contrary to certain Jurists) being usurers: inasmuch as the creditor gains something beyond the limit, solely on account of the loan.

Chapter IV. Dub. I. Of Custody and Wills. 197 "mutuum, which is usury." V. Laym, lib. 9 t. 4 c. 16 n. » 17. * (Et certum est cum Quare tenetur fructus etiam illos reddere, quos ex culpa levi neglexit percipere.

Vasq. » What if he has cultivated an uncultivated field? They say that he is still tender "to restore the fruit," * "2. However, just titles can intervene in the profitable fruits from a pledge without diminishing the property: thus, for instance, if one has received fruits from a hypothec that do not exceed the amount of the pension, which is legally assessed as the census and established over the same, it can be demanded with the pact of redemption, as was said above regarding censuses; or if another profit ceases, or damage arises while the debt is deferred. Wherefore it is not easily fitting to condemn those who have farms, pastures, offices, and other things entrusted to them in lieu of debts by princes.

V. c. et Binfeld, de usuris, cap. 137 etc. CAPUT IV. ON THE GUARDIANSHIP AND WILL. DOUBT I. What is tutela and curatela? To whom shall be given a tutor, and to whom a curator? What are the duties incumbent upon tutors and curators? An.

Can orphans and minors naturally bind themselves without the consent of tutors, etc.? See below verses 6. Pupillus. "Resi." A quasi contractus, quibus Tutor et Curator ad procuranda bona et commoda Mino rum cujuscumque sexûs, qui vel parente carent vel sub ejus potestate constitui non sunt, obligatur ex justitia, perinde ac si ex contractu ea obligatio suscepta fuisset; supplente nimirum lege vel magistratu vim contractús. Tutor and Curator differ, in that Tutor is given only to minors, even against their will, and primarily to persons so that they may care for their education and upbringing: secondarily, however, he is also given with regard to all matters concerning those goods. However, the Curator is given to Minors after the completion of the age of puberty, up until the completion of the twenty-fifth year; nor is it commonly given unwillingly unless in certain cases, and primarily for matters pertaining to Minors, secondarily for persons.

Wherefore concerning direction in the forum of conscience, by both natural law and common positive law, it resolves from the third day [of] the seventh question [of] the tenth. Bonaventurae, dissertationes tertii quaterni decimae. The first article. Tutors, quoscumque sint, hoc est relictis ex testamento seu codicillo patris; sive sint dativi, hoc est constituti a judice aut magistratu; sive sint legitimi, hoc est præscripti a lege (qualis præ ceteris est mater, si velit et promittat se non transituram ad alias

nuptias, quin priùs tutelam abdicet et rationem reddat: dein avia et consanguinei proximiores idonei) tenentur ut curatores jurare se fideliter officium suum facturos ac fidejussorem dare rem minoris salvam et integram restituendam; et universim tacite omnia eorum bona sunt hypothecata minori, ita ut ad quemcumque pervenerint possit illa minor sibi vendicare ut sibi satisfiat si quid illorum culpa est passus. V. Tutelares, sive sint testamentarii hoc est relictis ex testamento aut codicillo patris; sive sint dativi hoc est constituti à Judice aut Magistratu; sive sint legitimi hoc est præscripti à lege (qualis præ cæteris est mater, si velit et promittat se non transituram ad alias nuptias quin priùs tutelam abdicet et rationem reddat: dein avia et consanguinei proximiores idonei) tenentur ut curatores jurare se fideliter officium suum facturos ac fidejussorem dare rem Minoris salvam et integram restituendam: et universim tacite omnia eorum bona sunt hypothecata Minori; ita ut ad quemcumque pervenerint possit illa Minor sibi vendicare ut sibi satisfiat si quid illorum culpâ est passus.

Tan. l. c. . 4 c. 9. Bon. l. c. » » 2. The Tutor or Curator of Minors is bound to administer and take care of those matters which a diligent father of a family would have attended to in his own affairs, both by preventing and avoiding damages, and by seeking conveniences and profits for the Minor; otherwise, the loss and defect will be imputed to himself as proper gain, and it will also be held against him in conscience with regard to restitution. Life above L. 2 T. » » 3 c. 2 d. 3 R. 6. The good guardian is bound to take care of those things which a diligent father of a family would have employed in his own affairs, both by hindering and preventing damages, as well as by seeking conveniences, profits, and gains for the minor; otherwise the damage and defect will be imputed to himself as proper loss, and it will also be held in conscience with regard to restitution.

Good immobile goods of the Minorites, or other precious things, which can be kept, cannot be alienated, at least without a judicial decree. (Just as movable goods, which can be kept, do not require the consent of the tutor.) * 4. Toward Tatori, or Caratori, and persons subject to them, nothing is permitted to be rashly taken, either by themselves, or through another, from those goods of the Minorites, so long as they are such, except with the authority of the Judge, or with his decree, publicly, by a private vendor, all things being made for sale available to everyone. Nothing pertaining to Tatori or Caratori, and persons subject to them, is permitted to be recklessly taken, either in themselves or through another, from those goods of the Minorans, so long as they remain such, except with the authority of the Judge or by his decree publicly exposing for sale all goods of wards privately sold to everyone. Unless by decree of the Judge, a minor cannot either remit or renounce an inheritance, a trust, or

other legal rights acquired for themselves. If, however, he has entered into Religion, he can dispose of goods; because he dies as it were.

6. Sinè decreto Judicis non potest Minor remit-tere vel renuntiare hæreditati legalis, fideicommissis, aliisque juribus sibi acquisitis. A ward, while still a minor or very close to being one (so that if he is male, he has not completed his tenth year with half a year remaining; if female, her ninth year with half a year), cannot in any way obligate himself thereby either to another person or have another person obligated to him: but it is proper for one who is approaching puberty to obligate himself civilly, but not the other. It is certain that a Minor, or even a Pupillus with consent from tutors or a curator, can obligate themselves regarding goods that are either military in nature, or quasi-military; because they have free administration over these. See. The law which is 22 C. de Admiu. tut: because the right altogether annuls their conventions, as is found in l.

To resolve the seventh canon of minor precepts. Regarding pledges, they cannot bind themselves civilly without the consent of the tutor or curator; it is not permitted. C. de Pupillus. 5. From the Author of the Tutor. Part-200 Lib.

III. Trace. V. The Seventh Commandment of the Decalogue is commonly understood in the same way by the Doctors; if the ward is not near to puberty, as they teach in lib. 6, D. 38: n. 24. Lugo D. 22 n. 286 et Pupillus. 58 ff. de Act. et oblig.

If, however, the pupil is proximate to puberty and contracts with strangers, it is inquired whether he remains naturally obligated? The first opinion affirms this, and Lugo D. 22 n. 288 holds by that. 2 cap. 17 n. 61 cites it n. 31. 3. Session 5, treatise 4, chapter 9, note 7, page 1, paragraph 4, section 3, note 9, and Reg. Fill. The reason for these is that the fidejussor of the pupillus remains both civilly and naturally obligated, according to common opinion, as they assert in n. 45 from l. fin de Ju-rejur et l.

Marcellus. 35. ff. Sure, here is the literal English translation of the target sentence: **"Fidejuss."** Therefore, if the fidejussor (they argue) is already obligated, the pupillus too should be understood as obligated; for, lacking the obligation of the principal, the obligation of the fidejussor should also lack, as common opinion teaches from law.

When law 46 concerning Fidejuss. and l. Naturally, ff. Of the Conditions of Indebtment. But this reason does not sufficiently demonstrate, because it proves too much; for it proves that even the ward is bound civilly. The

reason is more compelling, because it is derived from law.

Novation, according to the laws on Novation, it is held that the Pupillus naturally becomes obligated, if he promises without the authority of the tutor; since in the aforementioned law it is stated that satisfaction must be made to creditors, provided that the obligation holds either civilly or naturally, for instance, if the Pupillus has promised with the authority of the tutor. The second opinion, however, denies that a ward or minor remains naturally obligated; and this is held by Bonac. de Contr. D. 3 q. 1 p. 5 n. 6. in fin. item Dic etc. ap. et vocant probabilem. c. n. 20 et Diana p. 2 tr. 5 R. 44. Reason, because from L. Orphan. 41 ff.

On the condition independently and by reason of law. Pupil 58 ff. de Actionibus et obligationibus expressè negatur; Pupil lum naturaliter; obligari; et praecisè in dicta l. 58 sic dicitur: Pupillus mutuum pecuniam accipiendo, ne quis form jure naturali obligatur. But this reasoning does not seem firm, for there is a case concerning an infant pupil, as explained by the Glossa; whence another Glossa in that same passage. Notarius ait: tam relatam l. The pupil is to be understood as only of the infant pupil, rather than otherwise.

Hence, the first judgment seems more true to me. Therefore, it is most probable that the Pupillus is not bound to fulfill what he has promised, as Lugo holds in D. 22 n. 300. with Soto, Mol. d. c. 1 n. 47. with . Of evil debt except and according to royal law in six [places]: He who is admitted to act is also admitted to be acted upon. See the aforementioned note number 890. 7.

The same reasoning applies to the Minor if a Curator has been appointed: whom, once accepted, he is bound by common law to remain subject to until the age of twenty-five years has been completed; and if a litigant has been appointed, he is bound to act as Curator towards him, excepting however spiritual causes. That is, if the Curator cares for them, his acts are valid through those, provided that, if any injury has been sustained, it be restored to them in full. See 3. q. 5. p. ult. If the curate cares for the cure, his acts are valid through them; yet still, if they be injured, they shall be restored to them in full. Although Minorites cannot be dispensed from the authority of Curators, unless those who are of an age to do so themselves customarily donate (for in such cases it is presumed that the consent of the Curator is tacit); yet he who has received donations from them is not bound to restore them, unless they are properly repudiated; because it is probable that they have natural validity, even if not civil.

Lugo, R. 4 et 7. 9. Curators and tutors are bound to render an account of the administration for each year; whereupon, if anyone should fail or be found harmful, he is to be removed upon imposition of satisfaction, and another is to be substituted in his place. » 10. Tenentur curatores et tutorcs singulis annis administrationis rationem reddere; ubi si quis deses aut noxius reperiatur, amovendus est, imposita satisfactione aliusque subrogandus. If Tutor or Curator, after the accounts of office rendered, is found faithful, a reward is due to him; which in some places is one twentieth part of the entire income of the Minor, but in others one tenth part.

» 11. Si Tutor vel Curator post rationes officii redditas fidelis fuerit, debetur ei praemium; quod in quibusdam locis est vigesima pars redituum bonorum omnium Minoris, in aliis autem decima pars. But as for those who cannot be Tutors and Curators; and who are excused from litigation and guardianship, it should not be imposed upon them, e.g., those having five sons. III. Treatise. V.

On the Seventh Commandment according to St. Thomas, loc. cit., and St. Augustine, lib. cit. Minor, ubi sic habet: Tutor non potest esse junior 25 annis, nisi forte maler; nec Religiosus, nec fac mina (nisi mater aut avia, et axor casu ante dicto); nec Clericus in sacris, si non velit, nec Episcopus, nisi miserabilium personarum. They are bound to take upon themselves the guardianship of these things, both Bishops and Clerics and Religious; which I do not exempt from all, he says, with regard to Religious. V. . c. » 12. If the tutor and curator, being bound to negotiate, neglected, the wards may receive from them 5 for 100.

Therefore, saith he. Curator. See also: Many things are seen above in book 3, treatise 3, chapter 2, doubt 3. » ## DUBIUM II. ### What is a testament and how manifold is it? 919 What is a testament? Concerning the requisites for a codicil, and what the Codicillar clause imports? How manyfold is the testament? Out of which heads is the testament null? What if the solemnities are wanting, and yet it be a testament for pious causes? What if the heir’s will agree with the testator’s wish? What if they do not agree, whether he himself must believe in one witness?

And whether a null testament may be valid so far as pious legacies are concerned? If a testament were made by rustic people? If it were made during a time of plague? Whether a testament without solemnities binds in conscience? See other cases. Concerning the testaments of clerics, novices, and soldiers. Dub. 1. Can a legacy be left to a virgin, so that she may marry, if she become a Religious? Dub. 2. Can a legacy left to citizens of the place be taken out and given beyond? Dub. 3.

Can a legacy left to orphans be given to those who have useless parents? Dub. 4. Whether a legacy left by one who has abandoned his children can be given to those whom he has married without dowry? Dub. 5. Whether a legacy left to maidens may be given to those who have already married without dowry? Chapter IV.

Doubt. II. Regarding guardianship and wills: Is it permitted for a widow to be given something so that she may marry again? Dub. 6. Is a legacy left to virgins intended for marriage able to be given to a virgin who is corrupted?

Dub. 7. Is it permissible to give a legacy left for virgins who are about to marry to a corrupted virgin? Is a legacy left to maidens who are about to marry owed to her if she marries? Dub. 8. If a girl has received a legacy as an orphaned virgin, and she is to marry, the legacy should pass to her heirs if she dies before marriage?

Dub. 9. Whether a legacy left over may be expended for the sake of the fabric of the Church on other necessities pertaining to Divine worship? Dub. 10. How is the legacy bequeathed to the poor to be distributed? “31 Questo. I. Can last wills and testaments be changed by the Pope unless there is a reason?

This II. From the Bishops with just cause? Question 1: Then is the consent of the heir and the legatee required? Dub. 2 What are the just causes for exchanging? Resp. 1.

A testament is a just sentiment of the will concerning what one desires to have done after his death, with a direct appointment of the heir. What is added is this, in order to distinguish it from all other last wills and testaments; for it differs from a legacy or partial fiduciary appointment, because this is a donation left by the deceased and to be fulfilled by the heir: (Legacies are to be received by the hands of the heir.) See *) however it differs, because a codicil is as it were an imperfect testament, and is not intended to institute an heir, except by privilege, e.g., military; but rather for explaining something in the will, altering it, subtracting from it, or instituting legacies. V. 3 t. 5 c. 1 et seq. 4 q. 8. 2 c. 19. Good. d. 3 q. 17 p. 1 » For a codicil, whether oral or written, five witnesses suffice, even without being summoned, and women (although for a codicil in writing the subscription of witnesses is required by law), according to the last law.

C. concerning the Codicil. Regarding a codicil among minors and soldiers,

two witnesses suffice; see Lugo D. 23 n. 15. Here it must be noted according to Lugo n. 17 that the clause appended to the will, namely, that if said document does not stand as a will, it shall stand as a codicil, implies that if there is no will due to defect of solemnity or through omission of the necessary heir, the heir by intestate succession should resolve legacies, according to 204 Lib. III. Treatise.

V. Of the Seventh Commandment of the Decalogue. Authority. From the cause. C. de Fill. prat. et insuper ipse tenetur haereditatem restituere haeredi in illo testamento instituto, retentâ sibi quartâ trebellianicâ, ut colligitur ex l.

Posthumus. §. Si paganus ff de Injusto rupto test. et si sit haeres necessarius, retentâ sibi portione debitâ. go » «resp. 2. A testament is double. I. In writings, that is to say sealed; which testament the testator himself has written, or by his own hand, or by another's, must be witnessed by seven witnesses, who are not defective, not blind, not deaf, not mute, nor madmen, prodigals, infants, religious persons, cognates, who are under the power of the testator* (Add to these infamous persons according to law, stepchildren, and the father of the testator, who are under his power. . 5 n. '10. » Add a heir, but not legatees, nor tutors, etc. » Neither religious persons, even if they sin by testing without license. » To which add himself and those in his power; but males, pubescent ones, free ones, to whom you ask and call before offering themselves, professing that it is their own testament: then, if possible, sign with their own hand; otherwise, eight witnesses for him testify; thereafter all seven witnesses sign at the same time, if they can, by themselves, either their own or another's, or a common seal. Laym l. c. * (There is no written testament from the heir himself, at least after sentence.

Psalm c. 5. n. 155.)* II. Nuncupativum, quod minorem solemnitatem requirit, scilicet tantum ut septem testes idonei supradicti convocati audiant et intelligant testatoris voluntatem coram eis scriptam; vel voce articulata prolatam * (Simul et eodem tempore, ut sint contestes, per signa autem nequit haeres institui. What if the Testator assents? It is probable that Lugo could be instituted thus, c. 5. Number 12.

Most especially to pious causes: Although indeed such a designation before witnesses by the notary is commonly reduced to writing in a document, this is done not for the substance of the act, but for better proof and security, in case the witnesses should die or fail to appear. If however the testament lacks due solemnity, and there is doubt whether the testator wished to have it sealed or unsealed, whether it suffices as a holograph: this is presumed to be the testator's will, so that the act may not entirely

collapse; . 4. cons. Lugo t. 2 de just. de 24. § 1. Moreover, besides these solemnities by common law, there are others peculiar to certain places, which are known by expert Notaries in each individual place; hence they are usefully employed so as not to be omitted. It is to be noted 1. when Lugo cites D. 24, n. 5, which quotes c. 1, q. 3, R. 2, against those who hold otherwise according to the more common opinion, from the law.

This most learned one, C. Qui Testam. etc. and l. Heretic 12 ff. in the same title: it is insufficient for the validity of a nuncupative will that the testator declare himself to name an heir in such a schedule, for example, one sealed with a seal or closed at such a place by nomination; but it is required that he name the heir in the presence of sufficient witnesses; and as regards other matters, it suffices that he refer to the schedule. Notandum 2., quod ex triplici capite testamentum 92 possit esse nullum: I. ob defectum solemnitatum substantialium, quae ab Auctore explicantur. H. on account of the defect in completion, for if the Testator dies or loses his ability before the testament is completed, the testament is null, even though he has instituted an heir, according to l. If anyone, from the laws concerning testaments.

This nevertheless runs thus: if it be established that the Testator desired to institute other heirs or to ordain legacies; but in case of doubt, the Testament is valid. Just as it is valid if the heir is a pious cause, or if there are written pious legacies in it, the testament can be null on account of lack of freedom, insofar as the testator has not acted freely; that is, not being insane, not deceived, not coerced by violent means or by importunate entreaties, nor through reverential fear. Just as if the testator had been induced by more ample entreaties, persuasion, etc. See c. 206 Lib. III. Treatise. V.

Of the Seventh Commandment: If a testament has been made for pious causes, it is not necessary to require them in external forum, but suffice those which are according to the law of nations, namely two witnesses; in the forum of conscience, supposing the power of disposition, suffice the writing, nod, or some other sign of the testator, without any witness. And if, however, the hand of the testator does not exist, two witnesses are required in external forum, between whom a woman may also be present. Covar. et alii 22. R. 16.* (Cum n. 17.)* Item Confessarius vel Parochus esse potest, licet legata sint pro sua Ecclesia, idque ad hoc tantum ut voluntas testatoris probari possit et Judex pro ea sententiam ferat. V. Lugo tom. 2 d. 22 s. 9. ubi etiam probat, in tali testamento ad pias causas non esse necessariam hæredis institutionem.

Although it was not completed by reason of death, nevertheless it remains

valid so far as the pious legacies are concerned which were expressed in it, Malder. 1. » 16. R. 126. But whether such a testament, primarily made for pious causes if solemnities are lacking, is valid as regards legacies, is controverted: Bonac. and Lugo deny this. They affirm Covar.

Therefore, ... 6. R. 4. * » (Et hanc tenent 2 n. 5 cum » communiori et Roncaglia cap. 2 q. 6 R. 1 vocat communes, quid accessorium sequitur naturam principalis. However, the opinion of Bonacine at point 3 n. 18 and that of Lugonis D. 22 n. 284 is sufficiently probable: what regards respect for laics. The Pope has made no disposition. The rule that an accessory follows the nature of its principal does not always hold, for the principal itself does not proceed where there is a different reason for the accessory as compared to the principal; this happened here. Therefore, despite the fact that the testament principally speaking is profane, a legacy left therein is nevertheless owed, even if the solemnities of Civil Law are lacking, according to what was said in the mentioned chapter.

Furthermore, the testament in favor of the children, although it holds good as regards Chapter IV. Doubt. II. On Guardianship and Wills. 207: Although it concerns minors, it is nonetheless invalid if the solemnities required by common law are lacking, as is stated in the text. After consultation with the competent authorities and as stated in the law.

From the imperfect. C. de Testam.) * De- » nither does the testament for pious causes revoke another solemn one, even though it does not make mention of this. Molin etc.: and that too, even if it had previously been directed towards pious causes. l. cit. R. 26. 27. As regards pious dispositions, it is certain that if the heir's will be in accordance with the Testator's wish, whether by word, gesture, or writing, he must either consent to the disposition of the inheritance out of pious regard, or dissolve the legacy.

It is commonly held Lugum D' 22 n. 267. Concina t. 7 pag. 647 n. 9. Laym'. c. 7. de Roncagl. cod. tit. 2. q. 2 R. 1 et Dic. D. 134 et c. cum Dit. Gom. etc. However, if contrary to this it is not established that the heir's will be disregarded by the testator, it teaches n. 4 that according to a certain rule, having received the consent of all, the heir should not believe himself prejudiced by the testimony of one witness, even though it be most credible, since in c. Tribus or two witnesses are required. And in the chapter Licet. concerning witnesses it is said: Although there are certain causes which require more than one witness; yet no cause is such that it may be concluded from the testimony of a single witness, even if it be legitimate.

This was necessary for the common good; that frauds may be avoided, they add. Holzrn. de sexto duo priores, pag. 3, nota 1130. Hence it teaches and they themselves say the same thing in article 10, note 3, and Croix ut sup. Resp. 2. If a will has been made for non-devout causes, five witnesses suffice for rustic people; if more cannot be had, nor is there need for subscriptions, according to chapter 208 of the book.

III. Treatise. V. The Seventh Commandment of the Decalogue will be, if the literati are not. . c. c, 2 n. 16. Bon. l. cited, part. 1 n. 4.

This question is raised, whether a testament void as regards impious causes is valid as regards pious bequests? Others deny it, because with the principal having fallen, the accessory also has fallen. But the more common opinion affirms this, because a special reason is found in the accessory which is not in the principal, namely, favoring Religion, and therefore there attention is given solely to Canonical law. Thus. 3 tr. 3 c. 2 et 926 » Resp. 3. In time of pestilence seven witnesses do not require to be simultaneously gathered for the subscription to a testament; but it suffices if they are individually used separately.

Add that equity is sought, so that when witnesses or a Notary cannot be had, the last wills may be pronounced valid, provided it is clearly established from the intention of the deceased. Hence in the Imperial Chamber a testament is valid, even during a severe plague, if it be composed before two or three witnesses among whom one can be a confessor. And these things are true according to the law of the Imperial Caesar, with special statutes established separately. For instance, in Venice and Vienna two witnesses suffice for a will. See chap. 2.

But absolutely speaking in time of pestilence sufficient are solemnitites of law, nations, and accordingly three, or even two witnesses. 1. 6. R. 34 ex Sa, modo non sit consanguineus, vel affinis defuncti, R. 36 ex Denique si Parochus scribat coram unico teste habere vim testamenti saltem nuncupativi dicit Molin et c. R. 34 et 41 vide etiam p. 5 t. 3 R. 123. 927 Resp. 4. Even though a probable and secure opinion is held regarding Cov. Well, concerning the third question of the first part on page four and others, the testament according to Chapter IV. Doubt.

II. Of Guardianship and Wills. 209 It is made invalid in the forum of conscience to act without pious causes, lacking the solemnities required by law, except that pious legacies, as stated by Diana p. 7 t. 6 R. 3 against Barbos, such that heirs through such an institution and the legatee are

bound to restore to the heirs from intestate succession: yet the contrary is more true, hence it is rightly retained, for what is possessed by such a testament. The reason is because those solemnities are required solely to guard against deceit, and to establish faith in external dealings. V. . 2 c. 19 d. 3. C. Lugo disp. 22 s. 9 Unde secundum hanc posteriorem sententiam resolves sequentes.

» A triple sentiment (as we have already said regarding contracts n. 711.) is for Testaments instituted without solemnities. The first opinion holds that these are valid in conscience and naturally obligate: thus according to Bus. . 2c. 19 d. 3. Mol. D. 81. Therefore, and Sylvester V.

Testament. Roncag. concerning moreover Mald. T. J. l. 6 c. 3 n. 4. And they prove from §. By tradition of the Institutes on Divine Affairs: Nothing is more consonant with natural equity than the will of the master being considered as having transferred his thing to another, ratified it so. Hence T. J. ibid., and Molf. say that an heir from intestate succession is to be considered entitled to receive the inheritance and restore the estate, provided the will of the testator is certain.

They, however, hold the entirely opposite opinion according to Cab. l. c., cap. 1, n. 52, namely, even when it is in danger itself. The same judgment is followed by Lugo D. 22 n. 256. with others: but it excepts that committed to faith, according to the last section of the aforementioned law, with Sot. I deem the first and second opinions probable, but this third opinion I deem more probable, and altogether to be followed in practice; because rather by all law is the right of possession; whence I altogether hold that an heir is not bound to release; and on the contrary, a legatee: . 210 Lib. III. Treatise.

V. Regarding the Seventh Commandment of the Decalogue: if they have received a legacy in good faith, they are not bound to restore it. Observe attentively what we have said in no. 711. That, however, is to be understood unless the judgment of the judge arrives, as Roncag. l. cit. and Cabas. l. e. with others cite. It does not hinder to say that the judgment of the judge is not binding, if one strives on a well-founded law against a false presumption of fraud which is not there; for besides the fact that the judgment then is striving on a law founded in the risk of general frauds, as Roncaglia responds, everyone is bound to comply with the command of the Judge ordering it; always provided that his sentence is not evidently unjust, for the good of common peace, so that an end may be put to disputes and quarrels.

1. Tamen haec intelligenda est, nisi accedat sententia judicis, ut dicunt Roncag. l. cit. et Cabas. l. e. cum aliis cit. The heir by intestate succession, if he knows the will of the deceased, is bound to restore the inheritance and to discharge legacies to whom less solemn testaments or those due according to his will are owed. Mol. According to the contrary probable opinion mentioned above recently cited. If there is doubt concerning the will of the testator, it should be resolved in accordance with the reason for the doubt: because neither he himself nor others have yet begun to possess the goods by right, in doubt it is equitable to accept their condition, V.

Civil law, loc. cit. » 3. If the heir by intestate succession retains the inheritance and legacies, those to whom something was bequeathed through such a testament may use an occult compensation, because really those things were their own. V. Bon. l. c. * (But we deny this. See what is said in lib. i. cap. 35. vers. 3.

However.)* » 4. If the heir, acknowledging intestate succession, admits that the testator's intention was to entrust the inheritance by way of a trust to another person, or to release some legacy; or if, having offered an oath and refused to swear, he must be compelled, even in external forum, to transfer the inheritance and discharge the legacy. » 5. Si hæres ab intestato confessus fuerit mentem testatoris fuisse ut hæreditatem nomine fideicommissi alteri traderet vel legatum aliquod solveret; aut si oblato juramento jurare noluerit, cogendum sit etiam in foro externo ad hæreditatem tradendam et solvendum legatum. For the same reason it must also be said, if it be admitted that the will of the testator was such that the inheritance should immediately pass to another, not as a trust, but directly, because recourse ought not to be had to the testamentary trust or to legal subtleties when he himself confesses the will of the testator. See de Lugo l.c. He says Lugo in D. 22, n. 257 and 258, that if the testator verbally commits a trust to the heir, and the heir remains silent, he is bound to fulfill it; but otherwise, if the testator commits to him a legacy; yet he states that if the heir has already discharged the legacy, he cannot claim it back.

Response 5. Even though it is probable that the wills of clerics and novitiates made for causes non-devotional without the solemnities of law do not hold: Molin. et alii 3. Yet even the contrary is probable, from . It is possible to inherit an inheritance from such a testament in the forum of conscience. R. 16.

» Resp. 6. The soldiers of this time rejoice in the same 99 privileges of testation, by which formerly, provided that matters (or perhaps in nearby cases for a legitimate reason) were involved. tr.: 15. R. 24. et seq. ex aliis

13. contrà, etiam monoton rogati, R. 46. et alii 4. contrà Lugo, Imò miles jure militari (quo præsumitur esse testatus in dubio) potest testari solo nutu, R. 19. Post mortem etiam plura simul testamenta valida facere, vel pro parte testatus, vel pro parte intestatus decedere, R. 53. et 55. His testament is valid also after an honest mission, but not beyond a year. Finally, soldiers can testify in this manner even if they are deaf and mute (at least if they have lost their hearing and voice while in camp). 49. and 50. from others * (A testament among minors is valid, as the disposition made for a pious cause.)

» See n. 20.) * Here it is necessary to note several doubts concerning the matter of 930 Legators. Dub. 1. May a legacy left to girls, so that they may marry, be given to those who become Religious? Resp. Whether a legacy left to girls, so that they may marry, can be given to those who become Religious? If a legacy has been left to a determined person, it is certain that it can be given to her, unless otherwise the Testator's mind determines otherwise, Lib. 212, cap. 212.

III. Treatise. V. From the Seventh Commandment of the Decalogue, thus according to the Authority of canon 5, no. 148. What if a legacy is left to indeterminate persons?

The first opinion denies that this is owed to those entering religion; the other holds 1 D. 33 n. 32. Con. D. 3 q. u. l. n. 19. Mol. D. 207. 83 n. 27.

R: 3. while common, as he asserts. Reason, because the mind of the testator must be preserved in its specific form, and can always be preserved; nor is recourse to his presumed will allowable when there is an expressed contrary will: For such testators intend by their provision solely for daughters who wish to marry, so that they may not be exposed to the danger of prostitution. Nor does the aforementioned law prevent prejudice from being inflicted upon others who are intended to marry, in the case stated. The opinion of the worldling, which Diana p. 4 tr. 24 and adheres to . 2 c. 18 n. 125 affirms should be given a legacy; because in said Authentics a reason is assigned why a legacy left to a certain person for marriage should be owed to her if she becomes Religious: Because they profess a life of religion, namely so that the girl does not abandon the religious state in order to obtain the legacy. When however the same motive of the law urges for the legacy to be left indeterminate to unspecified girls, therefore religious ones are not thereby deprived of it: For in this case (as it is said in l.).

Ilud. ff. ad l. The same reason applies in the case of unmarried girls;

therefore, the legal disposition should likewise apply. Neither (says Lessius) does the aforementioned law of Justinian rely on the presumed intention of the Testator, but it absolutely aims to favor piety, even against the express will of the Testator, so that if the Testator had expressed that girls entering religion should be excluded, such a disposition would be rejected as dishonorable. I dare not reproach this sentiment, but certainly to me it seems that the first chapter is indeed Chapter IV. Dub.

II. Regarding Guardianship and Wills... 215. more probable; because the authentic disposition contains a new right, which, since it exceeds the common law, should not be extended case by case; Especially because such an extension would prejudice others. However, it is more probable that the Council in tom. 7 p. 680 n. 11 says, that if there were no maidens who wished to marry, then the legacy should be handed over to those entering religion; unless the contrary is expressly deduced from the mind of the Testator. Preterita addit. All. 83 n. 28 with others, that if the Testator leaves a thousand to a maiden if she marry, and a hundred if she enter a Monastery, these hundred and thousand should be due to the Monastery; and thus it should be decreed in punishment of the Testator if this were done out of hatred for Religion: Otherwise, if this were done, then because the dowers of Religious would thereby be less than those of those who marry.

Dub. 2. Whether a legacy left to the citizens of the place can be given to strangers? It must be denied unless they have the intention of residing there permanently; for then from the beginning they are regarded as natural citizens; or unless without such an intention they have remained there for a decade. Thus etc. and Concilium tom. 7 p. 681 n. 14 ex l. 1 C. de Incolis. Here added is this, which Sanchez, Trullanich, and Barbosa report according to P. Ferrari (in Bibl. v.

Nempte, quod legatum relictum puellis originaris non sit dandum eis, qui casualiter natae fuerint in eo loco. Dub. 3. Can an orphanage be given a legacy that has been left to orphans who have worthless parents? Since the true arbites Parents are not concurrent, it seems that the received opinion among all is that it can be given. Reason, because thereby the will of the Testator is also fulfilled, who wishes to provide for children who do not have, and hence are destitute, and such are those who have useless parents; from that famous statement in the Gloss on c. Admov. quas. 33 q. 2 ver.

I said. If you are deprived of the thing, you do not deserve to have the name either. And from the Gloss on de Huic it adheres to what the Covars say. Balderich c. cit., namquidem, quod Pater dicatur orbatus filio, si fucus

Treatise. V. The Seventh Commandment of the Decalogue is in vain, according to the Glossa on l. Plagiarii. C. to L.

Flavlami de Ità, Concilium, tomo 7, pagina 681, nota 15, numero 2. R. 52. etc., and adheres to Lugo, D. 24, n. 303. Now, however, when parents are concurrently truly bereaved, should these be preferred? All authors affirm a priori when Sanchez Cons. l. 4 c. 2 dub. 13 calls it common; Reason because, since the will of the Testator can be fulfilled in the proper sense, it should not be fulfilled in the improper sense, ex Clement. It may happen concerning the relationship of a dormant heir and according to Sicut enim propriè vidua non est, which is one who has an useless husband, but lacks a husband, as they say Sylv.

Table and Anglicism among. However, they seem not altogether unreasonable in denying Bonac. D. 3 q. ult. n. 9 and Roncalli l. cit. Reply 2. Reason, because although it does not conform to the letter of the disposition, yet it nevertheless, rather more closely accords with the purpose of the Testator in providing for the poverty of his children; who are indeed more truly orphans than those without parents, since they should then not only provide for their own necessities, but also for the indigence of their parents. For then the purpose of the Testator is preserved, namely, alleviating their very indigence.

Thus commonly 7 de Matr. D. 91 n. 63. . 680 n. 12. Dub. 5. Whether a legacy left for placing in marriage a female can be handed over again to a widow for remarriage? Resp. affirmatively, unless women of another man's age are left as a legacy for remarriage; otherwise, if they are present, because by the name of a woman to be placed in marriage is properly understood that which has never married, or if it has married invalidly, or has not consummated the marriage, according to l.

This discourse. ff. de Verb. signif. It is commonly held that Sanchez, lib. 7 de Matrim. Doctor 95 note 65. Roncag. d. c. 7 4 3 R 4. Concil. tom. 7 p. 681 n. 13 et etc. Qui tamen rectè addunt cum Roncaglia, quod si legatum sit relictum pro nubendis feminis pauperibus, viduis etiam dari possit, quia verbi significatio convenit tam virginibus quam viduis.

Dub. 6. Whether a legacy relictum can be given to a virgin intended for marriage, even to one corrupted? It must be distinguished: if publicly it is known that she is corrupted, she cannot be given in marriage: because the will of the Testator would not be fulfilled, who merely wished to assist

those who are truly virgins. Secondly, if it is secretly known that she is corrupted, because in common estimation she is regarded as a virgin, this is gathered from l. Lib. §. Quod autem de legato fiunt.

Nec censetur Testator voluisse, ut puella manifestaret suam turpitudinem: ita communiter Conc. tom. 7 p. 681 n. 16. d. c. p. 4 R. 1. loc. cit., quia in favorabilibus verba sunt largè interpretanda, ut probant in tr. de Sed probabiliùs negant Concina l. c. et Martin. à S. tùm, quia verba Testatoris servanda sunt in rigore, quantùm fieri potest; tum quia talis interpretatio fieret in præjudicium aliarum. And the same seems to be held by Conveniunt; however, Dub. 7. If a legacy is left to a maiden, that she may remain a virgin, it should be given to her if she marries? Affirm; for so it is established in the law. How often, Chapter 22 and following of De Condicionibus et Demonstrandis.

Because, as is found in another law, book two, on how offspring may be increased. Thus it must be said if a legacy is left to a widow for the maintenance of her widowhood, Auth. To whom the legacy is left. C. tit. cui. Because it is honorable to abstain from secondary marriages; thus page 678, note 7.

Dub. 8. Whether a legacy left to a maiden, that she may marry, shall pass to her heir if she die before marriage? Lugo correctly distinguishes D. 24 n. 200 from Sanchez and Mol. If a legacy left to a maiden be intended for her sake in view of the preservation of that person's ability to marry, then it shall pass to her heir; but if there be no regard had to the person herself, but solely to some pious work to be performed, then it must be converted to provide dowry for another poor woman; or if the legacy be left subject to a necessary condition that she marry, without any intention of performing a pious work, then it will be profane and shall become void, and thus it shall pass to the heir of the testator. Dub. 9.

Whether a legacy left for the fabric of the church may be expended on ornaments and other things necessary for divine worship? Panormitanus and Lopez deny this in book 4, chapter 2, doubt 14. But they affirm the same probably, number 304, because by the name of fabrica are understood all things necessary for the service of the Church, unless otherwise it be determined concerning the intention of the Testator. Dub. 10. How is the legacy to be distributed which has been left to the poor?

Resp. Si legati executionem relicta sit ad electionem haeredis, potest ipse dare cuicumque vere pauperi. If however the election of the heir has not been committed, then the first to be preferred are I. Executors of the

Testator, as commonly DD. with Barbosa de 83 n. 17 and Roncag. on Et inter eos praeferendi sunt proximiores, as it is taught in . 2 q. 32 art. 9. For this is demanded by the order of charity: And this (adds Roncaglia) even if there are others who are poorer. Chapter IV.

Dub. Second. On Guardianship and Wills. 217 II. Poorer countrymen of the Testator are to be preferred over other outsiders, as the Glossa states in c. Piauperes, according to which it is gathered from l. President.

C. de Serv. III. More in need are they, as S. Th. loc. cit. art. 3 ad 1 says. And even married persons, as IV adds. Poor in the life of probation, as St. Thomas says there [in the same place], article 9. Herefore they say. III tractatus quintodecim chapter undecimum number sextus.

But rightly does Roncaglia assert that in equal poverty women are to be preferred, since these are exposed to greater danger of sinning. When therefore the Testator shall say that a legacy is to be distributed among the poor, he cannot deliver it to one person; thus l.c.n. 7. 2 c. 11 n. 34 et c. vide n. 22 et 54 cum et aliis communiter. However, they receive this exception, because it is not presumed that the Testator wished to place someone in a lower condition than other poor individuals; and if he left nothing to him, this is rather to be considered due to oblivion or inadvertence, or because the Testator did not wish to cause the executor embarrassment by counting him among the poor. Here is questioned the matter at hand. Whether a Supreme Pontiff may validly commute the last wills of testators without just cause?

There is no doubt that the Pope can change the last wills of testators with a just cause, as is evident from Clement. What happens concerning the goods destined for a certain use by faithful religious, where it is said: These things which are destined for a certain use by the faithful should be directed to that purpose, and not to others (save with the authority of the Apostolic See). But it is doubted whether this can be done by the Pope without cause? Three are the opinions among those in book 218 chapter 1. III.

Treatise. V. On the Seventh Commandment, number 1. The first proposition affirms what the soldiers hold. V. Eng. idem verbum locum citatum rationem adducit, quia omnia legata implicite intelliguntur restituta ad arbitrium Papae vel principis.

The second proposition, which the Angles maintain, n. 2, and to which Croix adheses 1 4 n. 482, admits of absolute power, but not of ordinary

power. The third sentiment is more true and common, which Bus. holds infra n. 939. Sanch n. 4 cum l. 3. tr. 5 c. 11 n. 11. cum communi, Mol. l. 4. de et Lug. D. 24 n. 312. (qui praefatas duas sententias falsas vocat), omnino negat posse Pontificem aut Principem sine justa causa commutare Testatorum voluntates. It is proven from the law chapter with Mol.

D. 249.) it is assumed that such commutations cannot be made by the Apostolic See, except for just and necessary causes. It is demonstrated by the second reason, because although the dispositions of testators are reputed to be committed to the Pope (or prince), yet they are not committed to him as lord, but rather as a dispenser of good causes or pious affairs; hence, since the Pontiff is not the lord of such goods, he cannot convert these dispositions into another use than that which has been destined by the testators, neither from ordinary nor extraordinary power. Si igitur est legatum profanum, poterit Princeps ob necessitatem publicam vel aliam justam causam commutare in aliud legatum profanum vel pium illud. If however the legacy be pious, then only the Pope may change it into another pious one, provided a just cause intervene. It is asked about II.

Whether bishops, with just cause, can change pious dispositions? The first opinion affirms and holds thus the Angels: v. Legacy. 2. n. 12 and 14. Sylvest. in the same volume, question 12, and Cons. lib. 4 cap. 2 dub. 2 n. 3 et Beja cum aliis ap. Croix lib. 4 n. 849 qui adhaerent huic sententiæ. Reason, first, because the common opinion (as Cr. asserts in ibid.) holds that among Bishops there exists a canonical power to commute; since such a commutation is an act which constitutes a dispensation fulfilling the ultimate will according to the prescribed law; whence it is said that dispensations can be made, and from this it is sufficiently understood that Bishops have the ability to do so; as many teach. In lib. 6 c. 14 n. 8, and in lib. 8 D. 5.

Hence they infer from c. dub. 7. and Lugo D. 24. n. 310. that if a Testator leaves a Legacy to some Church for a festive anniversary, the Bishop may temporarily commute that legacy into a form of Church repair which otherwise could not be made. Reason 2. quia, licet Episcopus nequiret hoc facere ex potestate ordinaria, potest tamen ut Sedis Apostolicæ Delegatus, modo adsit justa causa judicio Episcopi: Idque probant ex: In commutationibus ultimarum voluntatum, quæ non nisi ex justd et necessaria causa fieri debent, Episcopi, tamquam Delegati Sedis Apostolicæ, summarie et extra-judicialiter cognoscant, nihil in precibus, tacid veritate, vel suggest falsitate, fuisse narratum, priusquam commutationes praedictae executioni demandentur. Thus Barbosa de 83 n. 5. with Sydv. v. Leges 4 q. 12. Menca, Beja Graff.

Mendoza, etiam citatus Rotam et ita etiam Secunda verus sententia probabilior quam tenent 249. . 3 tr. 8 c. 11 n. 10. et c. dub. 2. cum aliis negat posse Episcopos, etiam cum justa causa, commutare ultimas voluntates. Reason, because from chapter Tua of 22 c. 8 it is imposed on Bishops to fulfill exactly the last wills; and this, even if the change were made for the better, as they say in n. 3 with Imola, and Bonifacius adheres at Lugo D. 24 n. 307 from chapter Conquestus of Foro comp. and chapter Quia nos Testam contra ac Sylv. Beja, 4 n. 847. who admit the commutation in betterment. They do not consider the first proposition to be proven, since there it is merely committed to the Bishops, that when ultimate wills are commuted, even if they were made better, as they say in c. n. 3 with Imola and Bonifacius adhering at Lugo D. 24 n. 307 from c. Conquestus de Foro comp. and cap. Quia nos Testam contra ac Sylv. III.

Treatise. V. Of the Seventh Commandment of the Decalogue: they are committed to the Apostolic See; these, before they demand their execution, examine whether true causes have been laid open? For the Council had spoken immediately in the preceding chapter 5 about the executions of dispenses obtained solely from the Apostolic Seat. And this they say to be conform.

Clementine, What has happened, cited in I. Question. However, it is nevertheless very probably held and consented to by Bonaventure and the Trullan Council, that if some cause should intervene, or if it were unknown to the Testator, which if he had known, he would have disposed otherwise, then the Bishop with the heir may interpret the will of the Testator from the legacy, and convert the legacy for another use; for example, if a legacy be given for vessels to be made for sacred uses, where the Church does not lack such things, but rather surpluses. When however pious legacies cannot in any way be applied to the use intended by the testator, those are not void, but should be applied to another pious use at the discretion of the bishop and executor, as they teach, namely, with Abbot and Lugo D. 24 n. 305. ex c. Nos quidem de Testam. But there is doubt: Whether in commutations made by bishops, is also required the consent of the heir and legatees? Abbots say that the consent of the heir is required, according to c. Nos quidem de Testam.

But if the heir refuses to consent, the bishop alone can carry out the commutation, as it is said in that place. It is moreover stated by the aforementioned Peter de Ubaldus ibid., according to Bartholomew, that in addition the consent of the Church to which the legacy was given is required; but if neither the Church nor its will would consent, The bishop alone can effect that commutation. Doubt is cast. What are the causes on

account of which the Bishop is able to change the last wills? The cause I is when money bequeathed for a certain use is insufficient, 83 n. 7 etc. II.

When the use of a bequest cannot be fulfilled, whether also if the thing bequeathed is unable to serve the intended purpose on account of an impediment either of fact or of law? Thus Socin. ep. Hence, si non potest Mohasterium Monialium construi, ubi voluit Testator, puta in loco campestri, contra praescriptum a Concilio Tridentino Riccius cum eod. Whoever notes with Ubaldinus and Genuensis: that if there is an impediment of fact; and it is not perpetual, time for a suitable opportunity should be awaited; according to c. non est etc. Concerning this, on Vow. If however an impediment is of law, Peter distinguishes this from Ubald, namely that if it be a legacy for pious uses, then a commutation should be made; otherwise, if for unholy uses, such as to have theatrical games in the Church, which are prohibited by canon with regard to decorum, de Vita et hon. Oler. Tunc legatum est nullum, tamquam inutilis; et fit caducum.

III. The cause is, if a legacy has been established for an unnecessary use; then the Bishop can change it to another pious use more necessary to that Church; thus II. Nay, even to another profitable use, if a grave cause be given, and thus it be presumed that the mind of the Testator so permitted, as is added by Genuensis ap. In like manner Riccio also says the same thing, namely that the income from some chapel assigned for masses can be commuted by the bishop into the purchase of paraments for once only. ## DUBIUM III. ### On the Renunciation of Inheritances. §32 When is a violent renunciation of an inheritance to take place? §33 Should this be strictly interpreted? See there the resolutions. §34 Whether agreements concerning the inheritance of living persons are irrevocable?

See exceptions. §35 Concerning the irritable constitutions of Tridentine regarding those entering Religion. « Resp. 1. The renunciation of a future inheritance, unless confirmed by juridical act, has no validity. The reason is because such a renunciation has been prudently regulated by law for the sake of public welfare. Except for. Unless one renounces in the very act of testifying either the right of succession, or after a will has been made in which omission of a suif prætérition is made, he shall approve the omission.

» 2. Unless the heir is necessary, after having received from the father an adequate and entire share according to his due, he renounces the remainder of the inheritance; who nevertheless, if the father's goods are subsequently augmented afterwards, will be able to demand their legitimate portion. Resp. 2. The renunciation of the inheritance ought to be strictly interpreted when it is odious and contrary to common right;

hence the cases are resolved accordingly. » 1.

The renunciation of inheritance does not prevent it from being instituted as heir by the same father, even though the son has previously lawfully renounced it through his own will. Molin. Chapter 7, Article 7. » If the son had renounced in favor of the brother before the father's death, then he who renounced in the first order of heirship can succeed; moreover, he should also be instituted, because the cause for the renunciation has ceased, Mol. d. 579 n. 19. » 3.

After the son has sworn renunciation, he can in no way succeed in those goods which the father is compelled to leave behind for his second marriage, having taken children from a previous marriage with him. The reason is that in those goods to which the father renounced by reason of civil Constitutions and favors, the son does not succeed by right of blood, but rather by reason of the civil Constitutions and favors. Even though the daughter, receiving a dowry from the father, may say that she is content with it and renounce paternal inheritance; nevertheless, such a pact is invalid, and notwithstanding this, she can petition for the complement of her lawful portion. From the law of dotal partition, C. de Collat., L. si quando C. de pact., etc. Although the pact from the pact. in 6 Mol. . 6 cons.

Lugo responded in moral theology, book 6, distinction 24. 5. If parents give a daughter a dowry below her portion legitimately and decently, and induce her to renounce it by coercion or fraud or deceit, they are not in the conscience of tutors; yet they are bound to restore her liberty, 4 de Matrim. d. g. In another place. » cii.

It is permitted for a daughter, if she has renounced by an oath, to be bound thereby; yet, should deceit or fear have intervened, it will be permissible to petition for relaxation of the unjustly extorted oath: and upon obtaining this relief, she will not be held to a contract that proceeded from unjust coercion. See. 2 Mor. c. 13. Lugo t. 2 de Just. d. 22 sect. 8 et resp. mor. l. 6 d. 24. Response 3. Every contract or donation concerning another person's living inheritance is ipso jure void, for example, a void contract is one by which Titius promises or obligates Caius to inherit what he hopes from Sempronius.

The reason is, because such agreements are odious and full of dangers, on account of the traps that are laid for his life whose goods are the subject of the agreement; » Excipe 1. Unless he who is concerning whose inheritance it is being discussed should consent, and should adhere to that consent

until death. Unless renunciation be made in favor of the Community, or of the College; for then the presumption, or the danger of plots, ceases. Unless one should dispose of all goods and acquired and to be acquired rights according to the Constitutions of the Order, for the sake of the pious Community or even a certain poor person, as c. n. 3 states. 4.

Unless a pact is made concerning the inheritance of an uncertain person, for example, if some inheritance should come to me while I am alive, it belongs to you: for the danger ceases, Mol. Chapter 7, Canon 2. You ask to what extent the constitution Hanc has no place in codicils, wills, or donations on account of death: because the reason for this constitution is that through renunciation of the inheritance a necessity for profit should not be imposed upon novices; for this reason ceases in these matters. Resp. 3. Every contract or donation concerning another man's living inheritance is ipso jure void, v. 9. Void is a contract whereby Titius promises or obligates Caius to inherit a legacy which he hopes from Sempronius; for such contracts are odious and full of perils on account of the snares which are laid against his life upon whose goods the contract is made. Unless he consents, concerning whose inheritance it is being discussed, and maintains that consent until death.

Unless renunciation be made in favor of the Community, or of the College; for then the presumption, or the danger of plots, ceases. Unless one shall dispose of all goods and acquired and to be acquired rights according to the Constitutions of the Order, for the sake of the pious Community or even a certain poor person, then only, c. 7 n. 3. 4. Unless a pact is made concerning the inheritance of an uncertain person, for example, if any inheritance should come to me while I live, it belongs to you: for the danger ceases, Mol. You ask, to what extent does the constitution 16, which irritates donations and renunciations, even those sworn ones which are made by those entering religion, extend unless they are done with the permission of the Bishop or Vicar within two months prior to profession, and then the profession follows afterwards?

Receive 1. Unless he consents whose inheritance is being discussed, and the consent extends even to death. 2. Unless renunciation be made in favor of the Community, or of the College; for then the presumption, or the peril of ambushes, ceases. Unless one shall dispose of all goods and acquired rights and those to be acquired according to the Constitutions of the Order in favor of the pious Community or even of a certain poor person, Chapter n. 3, c. 4. Unless a pact is made concerning the inheritance of an uncertain person, for example, if some inheritance should come to me while I am alive, let it be yours: for the danger ceases, Mol.

sect. 25 c. 16 irritable donationes, et renunciationes, etiam juratas, quæ fiunt abs ingredientibus religionem, nisi fiant cum licentia Episcopi sive Vicarii intrà duos menses proximos ante professionem, et professio postea subsequatur? Resp. 1. This constitution does not have a place in codicils, wills, or donations made in mortis causa: because the reason for this constitution is that through renunciation of hereditary rights no necessity be imposed on novices to make satisfaction; for this reason ceases in such cases. III. Treatise.

V. Of the Seventh Commandment of the Decalogue. "timid voluntary acts, indeed those which can even be revoked up to the profession." Wherefore the testament formed today by a novice is not broken, even after profession, although the monastery may have passed over it; . 7 c. 5. Qui autem licitè à religione recedit, recuperat omnia bona cuicumque ante donata, intuitu ingressūs in religionem.

Resp. 2. By this constitution, a modest donation is not prohibited, because the reason ceases to apply. Resp. 3. The aforementioned comprehend the renunciation of the Benefice of the Ecclesiastic. The reason is, because this is the loss of a great right on account of which liberty to leave religion is not impeded, Resp. 4.

By the same token, also those renunciations are provoked which are made before the entrance into religion, either intuitively or through a prompting cause for entering; such an intention is presumed in doubt if they have not been made much earlier than the entrance. The reason is, firstly because the Council speaks absolutely; secondly because it did not sufficiently consult the liberty of novices. l. 2 c. 41 n. 40 contra. Whereby thus the gift can be safely retained until the judgment of the judge rescinds it. Resp. 5 Irritated as well is the donation or renunciation of goods made under a condition of professing to be published, so that, if such publication does not follow, it may corrupt; for the reason is that donors, or those making renunciations, grievously constrain the donees, in order to deprive them of possession once obtained: and monasteries which have received such donations employ all means to induce such to be made for profession. Resp. 6. Notwithstanding this constitution, valid are renunciations made before or after entrance into the Society of Jesus, according to its constitutions.

The reason is, because the Council of Trent eloquently receives the Society. I said (according to its constitutions), because in those donations which are made contrary to its constitutions, it does not seem to have a place; because the Tridentine decree wished this for the benefit of the Society; Chapter IV. Doubt. IV. Of Guardianship and Wills. 285 Now what is

conceded on account of another's grace does not enter into his expense: Mol, Sanch, c. §36 Who can be Executors of Wills? Who can be Executors?

And who shall be by right? And whether they can exercise the office through others? §37 Whether a Religious Executor can apply legacies left to his monastery for pious causes? §38 How uncertain legacies are to be administered? §39 Whether legacies to pious causes can be commuted? g40. View resolutions. §41 How are to be executed the dispositions of the Testator? "Resp. 1. Those who can be nominated by the Testator are one, either from the heirs or from those who are not heirs; nor just males, but also females; and not just laymen, but also clerics, and religious. This, however, is not permitted to one who holds a license from his superior; But brothers of the observance in no way.

» If however a religious, contrary to the decrees of the canons, is executor of the will, his acts are valid. And the reason is, because, viewed according to natural law, the will of the testator's executor suffices; nor do the Canons weaken his execution, but rather prohibit it solely. V. Good contract doctrine from question 3, chapter 18. Response to question 10.

And although an underage person cannot be executor, a minor nevertheless may be one if he has attained the age of sixteen and six months. No one, however, can be compelled to be an executor, c. R. 27. Discussing this very point, he loses the legacy (at least that which was left to him as a reward for the service), and this he hands over to other executors, titulus 5. R. 27 contra Si nullus a testatore nominatus est executor. III.

Treatise. V. On the Seventh Commandment Decl. Retroversion; execution pertains to the heir, even as regards pious legacies; yet the bishop has canonical right to draw such away from him. c. Resp. 3. The executor cannot discharge the office through another, unless the testator has permitted him to do so, or unless the execution is committed to him on account of a fact already declared nakedly, C. de Lugo, 5: R. 26.

What do you inquire about? Whether a religious person can apply the legacy executed for pious causes to his own monastery? Resp. posse. Ratio est, quia, si quid obstaret, esset ex eo; quod executor etiam indigens eleemosynam sibi ex testamento applicare nequeat, nisi testator indignitatem ejus ignoraverit, aut ea postmodum superveniat, cum, si eam cognovisset, certum quid ei legaturus fuisse videatur. But this reason does not bind, because the cause of the monastery is distinct from the cause or person professed, just as the cause of the Church is distinct from the cause

of the beneficiary. Wherefore also any command to give something to the poor can be fulfilled by conferring it upon kinsmen or his children, because there is a clear distinction between the donor and the recipient, Sylv. . 6. c. 11 n. 56.

to the cause, or to the person professed, as the cause of the Church to the cause of the beneficiary. Wherefore also any command to give to the poor, one can assign this to cognates, or to his children, because there is a clear distinction between the donor and the receiver, Sylv. 6. c. 11 n. 56. » V. Dian page 8 recto 5. Reply 46.

But those bound to pious causes are said to be, who out of regard for piety have been left behind, excessively so. In place, or by the person of the Sacred. Hospitali. 3. » Confraternities. 4. Pupils and Orphans. 5.

The cause of food for those who are in need. 6. Cause of study, at least theological. 7. To construct the monument: 8. For the public utility, for example, in fortifying a city in necessity; or in repairing roads, according to R. 29 and 3 ox Bud. and other many things. What you seek is two.

How are they to be committed to uncertain execution for the public utility? Response 1. If the uncertainty arises from the part of the legatee according to civil law, it corrupts the legacy: for instance, if there are two persons of the same name and a bond of affection towards the testator exists in accordance with civil law, it corrupts the legacy; yet in the forum of conscience the executor is bound to divide between them equally, provided they consent thereto, R. 58. Trull: d. 12. 2. Legacies addressed to pious uses for the uncertainty of place or of the Church do not become void, but are generally destined either to be given to a poorer Church, or to be provided for in the Xenodochium.

They are given either to pious legatees on account of the uncertainty of the place or of the Church, not in vain, but usually they will be bestowed upon a poorer Church or a xenodochium. If the uncertainty arises from the part of the thing bequeathed, it must be seen whether it has bounds according to nature, as with a bull and an ass; or according to art and industry, as with a house, clothing, etc. If according to nature, one should be given out of the mediocrities; if according to art, the choice belongs to the heir who by giving the least in that kind satisfies. The same must also be said about legacies; they consist in number, weight, and measure. See c. n. 7, 8 et 9. » Resp. 2.

If they have received the sum of money to be distributed to the poor, they

are not bound to give it to the poor; and they can also give it to hospitals, churches (which lack ornaments or need construction), monasteries, or those who cannot live according to their station, whether they be artisans or of higher rank, even nobles, Vasq. Mol. et alii 8. provided always, however, that it is not certain, nor can be inferred from signs, another to have been the intention of the testator, which must always be attended to, tit. 15. R. 8. If, however, they have once designated certain poor persons, it is taught by Wad that they cannot vary this, but Lugo affirms in his fifth tome.

R. 50 and p. 2. t. 16. Response 19. They can also apply it to themselves, or their cognates, if they are truly poor, and especially if the testator was unaware of this, Wading 5. R. 46 and 47. » What you seek 3.

Whether legacies intended for certain pious causes can be changed by the Executor or Bishop to another pious use? Resp. 1. If the will of the testator can be fulfilled justly and honestly, it is not permissible to change it into a better work unless by dispensation of the Pontiff for a just cause, t. 17. Response 28 and page 8, treatise 5. R. 63. etc., commonly against Vasq. and some others who teach that the Bishop can be commuted to an equivalent or better.

Sometimes, however, according to the interpretation of excess, it pertains to the Bishop, heirs, and executors that what is not alienable belongs to Lib. 228. III. Treatise. V. Of the Seventh Commandment of the Decalogue.

According to the deceased's will, if a change is made; for example, if someone were to read money intended for the Church to purchase cups, and the Church does not need cups but rather baskets, Mol. .c. n. 10. » 8. § 5 d. 3 n. 104. 12. Barbos de officio et potentia Qu. II.) * » Response 2. If those destined for use according to the testator's purpose cannot be applied, they are not thereby rendered void, but at the discretion of the Bishop and executor they should be applied to another pious cause: nevertheless, so far as possible, the will of the deceased should be fulfilled.

The reason is because he principally intends to secure his own soul's salvation for the honor of God, de cont, qu. ult. p. ult. Barbi de Offic. Bishop * (Ex dicta n. 931. vers. Question.

II.) The following cases are resolved from the aforementioned statements. If a testator has bequeathed something to a pauper, and this pauper dies before the settlement, then the heir is bound to give it to another pauper, because it is presumed that the legacy was made piously for the benefit of

the soul of the testator; hence the designation of the pauper is demonstrative, not taxative: unless otherwise is determined or can be gathered from the circumstances of the testator's intention, in which case the settled solution remains. Mol. . D. 6 c. 10. §. 7. 2. If pious legacies are found to have inducements and do not stand with the intention of the testator, the heir is bound by them solely; because it is presumed fortuitously and casually, and not according to the will of the testator, Bard. d. 6 c. 10. § 17.

If the Testator had bequeathed a sum of money for a certain number of Sacred Scriptures? but if the Heir has given that sum to some Priest for good use, and afterwards, upon the death of said Priest, or on account of some other cause, prudently doubts whether those Sacrifices have been duly performed, it is not necessary to care again about celebrating them; because the Testator's will has been satisfied. What do you inquire about? Within what time, by what order, and in what manner the heirs and executors ought to execute the will of the deceased, and who can be compelled to do so? » Resp. 1. To be held immediately after the entry of the inheritance and the completion of the inventory, even within a year, unless they are excused by a just impediment.

But within six months after the legacy has been assigned to the heirs, even if the inheritance has not yet been taken over, provided that the heir was previously dead or renounced it, then if there are notable delays (especially in settling the legatees), or negligence in executing the will, they gravely sin; and they are bound to compensate for the damage which others have incurred on account of their fault. Bon. d. 3 q. 18 p. 4. Therefore, in the forum of conscience heirs and executors are held under grave obligation immediately to fulfill legacies (especially pious ones). This is commonly Anton. Both from the ecclesiastical judge and the secular one can they be compelled (provided that they be laics). This is such that if after a year from the notice of the judge or bishops they neglect to execute, all benefit (excepting total legitimacy, if necessary heirs are present) deriving from the testament itself will be deprived them. See c. tr. 5 c. 11.

C. de Lugo d. 26 de just. Valer. . 11 otherwise, if one enters a year negligently » to execute, the right of execution is transferred to the Bishop, » Molin. et alii 8. . c. R. 33 and 54. But the Bishop is bound to execute [it], by removing them from execution and stripping them of emoluments; and in the absence of the Bishop, the same can be done by the Metropolitan, Molin. » » Response 3. The executor is bound to execute everything according to the intention of the testator; nevertheless, a particular executor cannot sell the goods of the deceased unless he has so ordained:

but the universal executor can, Lugo D. 24 sect. 16.

Resp. 32. Nor can he ever give a bequeathed thing to the legatee against the will of the heir: because he cannot deprive the heir of his possession without the judgment of the judge, although it is held that the bishop should be admonished so as to compel the heir. R. 3g. quod si bona non sufficiant ad legata omnia solvenda, distribuenda sunt omnibus æqualiter pro rata (etiamsi sint pia; et licet uni res certa, et in dividuo sit legata) nec licet uni præ aliis gratificari: quia par omnium est ratio; et jus, Sylo. l. 7 c. i8 d. 12. Response 4. Executors are bound to render an account of the execution (this being probable, even though the testator might have freed them from this burden); excepting those things which the testator commanded to be expended secretly, Diana p. 8 t. 5.

R. 34. and others » 35. They could be compelled to do this by the Bishop or the Chapter, sede vacante, R. 36 and 37 and 62, unless they are Regulars fully exempted, whom some say can be compelled, while others affirm that they cannot, as seen in loc. cit. Finally, no salary is owed to them, since it is a voluntary office of friendship; however, if they suffer damage thereby, or if they are also administrators of goods, then a compensation should be assigned by the Judge, Lugo d. 24 sect. 16 n. 335. V. Many concerning the execution of last wishes and final volitions; V. "Among the articles and chapter three of the law of universality."

» c. 27. * (Nullus tenetur munus executoris exercere. He has already accepted it. Or he has received a legacy, otherwise a legacy to an heirless. Doubt V. Of those who can be appointed as witnesses and instituted as heirs. 942 Who can be appointed as witnesses? 943 Who can be instituted as heirs? 944 See resolutions. 945 What is the division among heirs! 946 Is there a grave obligation to leave goods to brothers and other needy kin? 947 How much must necessities be provided for heirs? 948 What are the just causes for disinheriting children? 949 Does it happen on account of nu- Cap. IV. Doubt. V.

On Guardianship and Wills. 251 times with the natives? And see the doubts concerning this matter, V. But there is doubt? See other chaste ones when Testaments are invalidated. What can spirits petition from the Mother and Father? If the Father retains goods for another, so that he may return them to a bastard son? Who shall succeed as heirs by intestate succession? How should distribution be made among brothers? Should expenses be provided for study, Doctorate, etc.? Whether a patrimony is given to receive Orders? 957. Whether paternal goods, which are expended by the father on games for his sons, should be considered? 958.

An expense made in the marriages? Whether garments and similar gifts given to Parents? 960 What if spouses should go over to second nuptials? 961 Concerning debts due to Falcidia and Trebellianicus from heirs. « Resp. 1. All men have the liberty of disposing by testament of their own goods, unless they be prohibited by natural law or positive law. Infants are prohibited by natural law from testifying, as are madmen and those in a state of dementia, unless they have intervals of sanity, or have raved on one particular matter only and not on others, according to 1. 1 de Alaram. d. 8. What, however, is to be thought concerning him who for a considerable time has been delirious from illness?

V. C. Lugo dicit in quarto sententiarum. "Positively, deaf at once, and mute by nature, prodigal, servant, public usurer, son-in-law of strangers * (even by consent." Father, » unless to pious causes, from l. Whoever is in the power 6.

D. Qui » testamenta, etc., et ex c. Licet de Sepulchro in sexto.) * (si » quidem ante clericatum advenerint, ut v. C. de Lugo de just. d. 24 n. 67), impubes, captivus, apud hostem damnatus ad mortem, si bona ejus confiscantur, C. Lugo l. c. n. 72 professus religionem. I say, having professed, because although he is a novice and still subject to another's authority, without the superior's permission he can validly make a testament even if his legal capacity has been impaired, and if he should die intestate, his nearest consanguineous relatives succeed in his goods. Similarly. The religious of the Society, after having made simple vows, although not licitly, nevertheless can validly testify; because the dominion over his goods remains.

III. Treatise. V. Of the Seventh Commandment of the Decalogue. It holds the impedimented as if by a vow of poverty, so far as disposition without the license of the superior is concerned, yet nevertheless the canonical disposition is not disturbed.

Thus Mol. » He who adds, possesses the power of testifying, whether by right or by custom, even the power to testify is frequently conceded to Religious of military orders who have a Benefice outside the cloister, or an Episcopate. Response 2. All men, even madmen, deaf, mute, slaves, nay, and communities, heirs can be instituted; unless this is specially prohibited. Therefore, fourth question, last article.

Because for this purpose alone is required the power of the disposer in the heirs, and capacity in the heir; but those who are incapacitated according

to law are excepted. Apostates, and Heretics, as well as their receivers, defenders, and supporters: although it may be probable that they should not be held to restitution before judgment, this is due to the fact that such rigor has not been received in this regard. 2 c. 19 dub. 5. 2 c. 14 n. 31. 2. The city of enemies, and the fortress of Jews. 3. Condemned to the mines; persecutors and beaters of Cardinals, and those who by active crime are internally corrupted.

Add cases in which some are excluded from the goods of the defunct; namely, 1. Heretic (as executor and legatee) who kills the testator, according to the last book, last title, and final laws concerning the goods of those condemned. 2. The same [applies] if one prohibits the testator from making a will, or revoking the will, or if one approaches the testator's wife. 3. Si dum testator mente captus fuit, hæres illius curam non habuit, aut si captivum redimere neglexit. V. Si testator mente captus fuit, hæres illius curam non habuit, aut si captivum redimere neglexit.

" Mol." D. 168 and 202. C. de Lugo d. 24 n. 75. Thus it is resolved. 1. Heirs can be instituted by those who have professed orders, to whom it has been permitted to possess immovable goods in common, and upon their name the monastery succeeds.

These, however, are all nearly religious orders, except for the Order of Minorites of Observation and the Capuccinorum. The reason is because they are incapacitated, according to the Conciliar Decrees. Session 25, Chapter 3: V: . 6' c. i8 Bonac. l. c. » . 3 t. 5 c. 15 licet contrarium probabilius esse putet Wading. tr. de cont. lib. 4 dub. 1 § 5. See » 16: » 2. A testator can institute as heir anyone he wishes, even a stranger without mention of consanguineous or collateral relatives, including the brother-poor, provided that there be no scandal and grave necessity for them; because there is no law prohibiting this, and the goods are his own over which he disposes freely.

You ask: What is the division of heirs? » Resp. An heir is one from a will, another from an executor. An heir from a will is either universal, that is, from the entire estate; or partial, that is, from part only, for example, from a third, or a quarter, or a sixth. Each of these either is a necessary heir; or has been instituted necessarily, so that all who descend in direct line and succeed after them are heirs unless there be a just cause for disinheriting; or it is not necessary, which the testator can institute although he is not compelled to do so. Does the testator stand under grave obligation to leave goods to cognates who are not necessary heirs if they themselves greatly lack?

Speaking of brothers or sisters, they deny [it], n. 175 and 8 R. 85. But they themselves, neither of Lugo nor of Diana say this; but these, with 'this' being a matter of great weight, we do not see how it can be denied that charity gravely obliges to this. It is confirmed thereby that commonly they teach 4 c. 13 n. 5 with Augustine. Abb. de: 4 adeò ut Clerici 234. Book.

III. Treatise. V. They are bound by the Seventh Commandment of the Decalogue to render benefits from the fruits [of their actions]. To prefer benefits to brothers grievously in need over other poor people, as they say, c. cum. . Fag.

And this is not merely from the general precept of charity, but also from the special obligation of piety which we have towards brothers, and on account of which it is certain that to have a special malice towards brothers constitutes a specific injury, as explained in Confession by the DD. with Lugo de Panit. D. 16 n. 305 and Psalterium eodem titulum chapter c. 8 n. 82 et 87. Hence we hold it altogether fitting to say with c. 4 in Gratian, in a grave necessity prior to all others toward the poor, whether they be works of piety... Moreover, it is added that, even if brothers are poor and do not have great indigence, nevertheless it should at least be venial to pass them by. Ergo, verummodo putat c. adesse eamdem obligationem gravem eis succurrendi, si gravi vel etiam ordinariæ paupertate laborent; quia censet offendicam adversus eos diversam etiam speciem afferre. Nevertheless, since this opinion is that of this Author alone, and the common sentiment is opposed to it, namely, that sins against oneself do not change the species thereof, as Lugo teaches in D. 16 n. 308.

Bonaventura, idem titulus 4, caput 5, sectio 2, pagina 2, section 3, differenziatio 3, nota 15. Croix l. 6 p. 2 n. 1000 cum Dic. etc.; hinc non videtur adesse: gravis obligatio ipsos praeferendi aliis pauperibus. On the contrary, because (as Lugo says, and the commentators concur with chapter 5 § 2 n. 9) offense against cognates, outside of brothers, at least aggravates the guilt, even if it does not change the appearance; hence I think that a venial neglect of them is not excused when they are in great need, since there remains some obligation of piety towards them which is not so strictly binding. 547 » You inquire further. Concerning heirs, necessary ones, be it decreed? » Resp.

By new law, the legitimate portion descending be three parts of the inheritance if there are not more than four free heirs; if there are more, then half. If the portion of those ascending militarily is even one alone, it

is a third of the inheritance.* (Or a third part, according to the common decree DD.) * And this without any burden, manner, or condition; otherwise they are considered not properly appointed. If however to any ascendant or descendant a legitimate portion is not left, he has the right to bring an action for obtaining the complement; or for rescinding the testament, so that by law itself there be none, especially if the cause of disinheritance is not uncertain and unproven, the just causes of disinheritance are those mentioned in the first [place]. If a son, through grave sin, strikes his father or gives him a blow, or attempts to kill him. If he accuses the parent, or is a witness or curator against him in criminal causes, such as those of death, perpetual exile, infamy, or great damage; except if the crime be heresy, or lèse-majesté.

If he has committed adultery with his father's wife, or with the father's only concubine. 4. If he is unwilling to be a surety for the release of his father from prison. 5. If he prohibits his father from testifying. 6. If a daughter, having refused a just Marriage, lives luxuriously as a prostitute; but not if she marries against the will of her parents. Here it is asked whether parents can disinherit children who enter matrimony with unworthy persons?

Baldus and Goffred affirm, as found in lib. 4 D. 24 n. 2 æx Authent., ut cum, de Appell. § Aliud quoque; ubi dicitur filium exhæredari posse ob gravem injuriam Patri illatam; et talem hanc esse dicunt. But most certainly to be denied with Sot. Mol. Marsh. Reason, because in the aforementioned Authentica it is explicitly stated that a daughter can be disinherited solely in the case where she, being under twenty-five years of age and having been rejected by her father from marriage, has lived luxuriously.

Whether, however, in this case the Father can still disinherit his daughter? They likewise deny both the Council here and D. 25, n. 2, cum Abb. Syb. 236, Lib. III. Treatise. V.

Of the Seventh Commandment of the Decalogue. Anger. Henry and others many. Reason, because the Civil Law has been corrected by Canon Law on this point, as stated in chapter Gemma de Despons. where it is declared against the preservation of freedom in Marriage that any penalty imposed on betrothals is unjustified: Since however the reason for the Sacrament of Marriage is more dignified than the reason for a contract, therefore primarily belongs to the Ecclesiastical Authority the power to dispose concerning Marriages and to repeal civil statutes which diminish every kind of freedom in Marriages. They, however, contradict Sotus, Molinaeus, Vega, Viguera, and others according to c. n. 1 of this chapter; Bonacosa

calls this very opinion probable, and .

Reason, because in the aforementioned chapter Gemma, the discourse is about a penalty to which the spouses willingly submit themselves; no one was at all bound by it except through a pact, which indeed opposes the liberty of marriage; but in our case, we speak of a penalty justly inflicted upon children, for according to every right, children are deprived of legitimate inheritance when they commit a grave crime against their parents; what greater crime than to reject honorable marriage and wish to prostitute one's daughter? Both opinions are probable, but this second one seems more probable according to what is said in no. 137. The more so, because even the penalty attached to sponsals against the unjustly resilient party is efficacious according to the more probable opinion, as we say in Matr. lib. 6 n. 852 vers. However, it must be noted. Another version according to which sons can inherit from their parents for similar reasons, as you will see in Sed quid dubitatur 1. whether parents can also deny sustenance to their children in the cases enumerated?

Affirmant Vasq. et Sylv. But more commonly and far more probable do Villalba and others deny this: if children have no other means from elsewhere for necessary sustenance to live; for these things are always owed them, at least according to canonical law and natural law, and indeed also, I say, according to civil law, by which filial inheritance is conceded to parents, but not the denial of sustenance. Dubit. 2. If a father, having just cause, nevertheless in fact does not provide for his children, can these be deprived of such provisions? Chapter IV. Dub.

V. Of Guardianship and Wills. Page 25, reverse. Return? Negatively responding with the common opinion; thus and furthermore, what is sanctified so that the cause of disinheriting may not only be inserted in a will but also legitimately approved, so in the Auth. C. de Liberis etc. etc. Sed negant probabilibus maxime, quia in Jure prohibetur exhaereditas ob alias causas quam expressas, ex Authent. That is why, with regard to appeals, something else.

Dub. 4. Whether a father, receiving his son into his grace and forgiving him an injury, can nevertheless disinherit him? Negandum est cum Lugo, Mol. Villal. etc. commonly: because, with the injury remitted, the father no longer has a just cause for disinheritance. Doubt. 5.

Whether, if the son perform penance for a crime committed against the father before his death, the father can nevertheless disinherit him? They deny it [the possibility] Trullanum 15 n. 108 et because penance in human

forum does not liberate from punishment the one who has sinned. "His add I." Rumpi testamentum ob posteriori præteritionem. II. Parents sin if without a just cause they institute an unequal succession between children from an excessive affection towards them.

The just causes of this inequality will be merits, and greater obedience, if the smaller ones are to incur greater expense in banquets: if it appears that some have exceeded more. If anyone, having been sustained in studies and being able to earn a living, and others likewise: but the father, who has above what is legitimate parts for his sons, can rigorously leave the surplus to a stranger, 19 III. Natural children, unless legitimated, are not necessary heirs in respect to the father, but are so in respect to the mother; and this by equal right with legitimate children. If, however, in part the promise made contrary to the laws does not oblige him; and conversely, truly he is heir, and acquires dominion by inheritance. Thus. c. 3 dub. 20 n. 9.

Mol. D. 169. et Lugo D. 24 n. 95., qui vocat hanc veriorem et communem cum ex altera non potest haereditatem retinere contra voluntatem Testatoris, qui numquam intentio-nem habuit ut apud eum bona remanerent. Thus Soto, I, 4, de aliqua etiam Salonicana. Led, Trull, apud c. n. 70, et valdè probabilem hanc vocat; maxime si ideò hæres aliquam partem bonorum sibi acquisiverit. To the objection, however, that that promise does not oblige, first because it was made against the law and in its fraud; second because that burden or condition is disgraceful; therefore it should be rejected by the law: they respond, that it is one thing for a promise to be made against the law, and another for the matter or thing promised to be against the law; for a promise made with intent to obtain a disgraceful thing is illicit and invalid before the transfer of the disgraceful thing; but after its transfer: then the promise of the price is valid and obligates, and its fulfillment is lawful.

Just as he who promises a fraudulent reward illicitly promises it, and before marriage is not bound to fulfill the promise, but after marriage lawfully delivers the reward, and is bound to deliver it according to justice, as we said in n. 712. Just so, although that heresy illicitly promises itself to be delivered over a spurious inheritance and sins by promising, because it fraudulently contravenes the law; yet it can and ought to deliver over the inheritance according to the pact initiated, after the Testator himself has left the inheritance: » Quedas 3. Who succeed as heirs by intestate succession; from a testament broken or annulled? » Resp. I.

Before all others, it is customary for legitimate sons to succeed the father and for nephews to fill the place of those demoted. II: » For those who are lacking in descent; a father, a mother, de- funeited, and in their place

brothers, and avails. III. His quoque deficientibus, fratres et sorores ex utraque parte conjunctos; idque æquis portionibus, exclusis his, qui ex solo patre vel matre conjuncti sunt. IV.

Si ex fratribus vel sororibus utrimque conjunctis unis mortuus liberòs reliquerit, succedunt hi loco parentis sui cum patribus, non in capita, sed in stirpes. If however brothers and sisters joined together all have died, then their heirs, excluding fathers from one such part of the union; not in stirpes but in capita, accordingly they succeed in equal proportions; because of two brothers, neither taking the place of their own parents, but by reason of their own union, do not subside. Since therefore they are equally joined together, they should also be equal in portion of inheritance. (Ipa. et. contiv Alios.) W. If brothers and sisters on either side are deficient and their offspring, then brothers and sisters from one part only of such connection succeed, in accordance with discipline, so that those who are united by a paternal portion may succeed in goods deriving from the father, while all others are more equal. VI.

If brothers and sisters, and others from their side should lack, those nearest in collateral relationship succeed up to the tenth degree: and such succession occurs in heads, without any regard whether they are connected on one side or on both sides. (Autenticus post Fratres.) VII. In defectu fratrum et sororum, et aliorum eorum, succedit uxor, et dimidiae in illius morte fiscus sæculari in omnia bona laici ab intestato defuncti: fiscus autem Ecclesiasticus in bona Clerici. Hence there is inquiry how it should be done among brothers regarding the distribution of goods coming to them from the estate of a parent who has died? §42 Lib. III.

Treatise. V. Of the Seventh Commandment of the Decalogue. This collection, although it would have had a place solely according to ancient law when heirs were determined by intestate succession. Fathers succeeded, according to law; however, anew, ex § Illud., they are always bound to confer goods obtained from the Father upon the sons, unless the Father expressly exempted them from the collation; or unless some of them do not wish to have a portion with others, contenting themselves with what they possessed in life from the goods of the deceased.

However, they may petition; if anything had been promised to them as dower by the Father, or for the cause of marriage or similar reasons, unless that promise be excepted: legitimate injury shall be avoided, leg. penult., and all laws concerning collation . 455 Quæritur 2 whether expenses incurred by the Father for the sake of his son, books purchased for the doctorate degree, should be included in the collatio and portion of goods, and Resp. negatively with the common opinion, because these things

belong to the common good, n. 76 cum . Unless (the Nav Syd say and, ibid.) they were in the hand of the Father, the goods proper to the son, for example military or quasi-military; then it is decreed that from these the son was sustained in studies.... They extend this doctrine to expenses incurred out of some dignity, i.e., then it is presented. The Father would rather have given them as gifts, unless otherwise he has expressed something, or authorized something to be written in the book of accounts with his son; for from this contrary judgment is made. They extend this to expenses incurred, so that the son may enter the military service, or obtain a benefice, or be released from bonds, or from criminal penalties. Thus. n. 77 with Syd. with §56 Question 3 an. whether it should be conferred upon the son who has been given a patrimony by the father for the purpose of receiving sacred orders, if the donation is legitimate for other sons as well?

Gomez, Pereira, and others deny at n. 73 Conc. Tractatus 565, caput 2, numquam 21: ubi prohibetur omnis alienatio Patrimonii. They, however, approve Lugo D. 5 n. 37., and the Council (responds) non-absolutely prohibits the alienation of the Patrimony Cap. IV. Dub. V.

On Guardianship and Wills, 243: Not on alienation, but only when the cleric otherwise cannot decently live: Hence a cleric can lawfully spontaneously transfer his patrimony with hope of obtaining a greater porringer. Question 4: Whether a son is bound to surrender what his father has improperly expended on games, whores, etc.? They affirm thus in n. 82: "If these expenses have been made in large quantity; and the Father has not remitted them." They deny, however, according to chapter 5, note 44, that when the son has not spent more wickedly than the father was content to spend for his own sustenance and honorable recreations: Otherwise, if the expenses exceeded. His assertion with limitations on both sides easily reconciles these sentiments. Question 5: Whether the expenses made by the Father on the day of the nuptials should be brought into the collation?

Resp. negativæ cum communi, etiamsi filius habeat bona propria, nisi aliud expressè constet de voluntate Patris, ex Præc. n. 85. Question 6 an mobilia, vestes pretiosae, et similia data a Parentibus sint in collationem afferenda? Affirm, nisi Parentes expressè alio disposuissent ex lege. That from the letters, and let it be. That C. de Collat.

And the same applies to honors and gifts; n. 86 cum comm. Sanctius: Sed secundum veram dicendum de vestibus ordinariis. His addi i. If a wife, having received children from her prior husband, transfers to second nuptials, whatever she acquired from her prior husband by donation or testament is to be handed over to the children of that same marriage.

Similarly, if a husband takes another wife.

Add two. By going to the heir, heathenship is transferred, not merely advantages and rights, but also debts and real burdens of the deceased. However, nevertheless » to enjoy a twofold benefit. 1. That above the powers of hereditas are not obligated. 2. Which after deduction of funeral expenses and settlement of debts remains the fourth part *(Qua §44 L.*.

III. Treatise. VI. Of the Eighth. Before. And before.

Ecclesiastical. It is called Falcidia in legacies or donations due to death, not truly pious; as stated in number 196. » Trebellianica however in trusts), * should obtain the inheritance through heirs; and if they do not, through legacies, but not pious ones, as noted in . 7 c. 18 d. 12 ex Autlient, similarly C. ad legem Falc. » they can detract, by virtue of the law's benefit. Falc. 3 t. 5 c. 6 n. 7. 4 c. i5.

That is why the heir must be deemed to have completed the act of inheriting (Jur.). Del. l. 6: Nisi adsit legitimum impedientium; tamen hanc obligationem testator possit remittere respectu legatariorum et fideicommissariorum, quibus ex mera liberalitate aliquid relinquit, non tamen respectu creditorum, quibus praejudicium non patet. Therefore, in regard to all from the burden of inventorying, and from the accounts to be rendered by which he can leave goods without burdening others with a part, he is able to liberate them, granting this on their say-so or by their oath. Mol. C. de » Lugdunensi doctoris tertii decimae secundi sectionis caput octavum numerus centesimus sexta.

TREATISE VI ON THE PRECEPT. EIGHTH, NEW, DELMO, AND. THE COMMANDMENTS OF THE CHURCH. CAPITULUM PRIORIS UNICAE TRINITATIS

Of the Precept. Eighth. "Here shall be tested every unjust injury to the reputation and honor of one's neighbor: especially all falsity, meanness, and verbal injury, which is done either by false accusation or by concealing the truth in judgment, as stated above; also by pernicious lying, seeking out and revealing a person's faults, concerning which see V. 2 p. ut., 3 p. 2 q. 5; finally, by detracting." » What is suspicion, rash judgment, and doubt, but what sin is it? 962 On Rash Judgment, and when it is mortal. 963 On Suspicion, and on Rash Doubt. 964 Can this reach to a mortal sin? 965 How is the distinction made between Judgment and Suspicion? I suppose these three differ from one another: judgment is a firm sentiment of the mind, but an undoubting assent; suspicion is an

inchoate assent, by which one inclines to one part, judging with some probable ground for opinion; while doubt is not an affect (save causally), but rather a suspension of the mind, inclining to neither part: hence this question arises? It is not about prudence concerning suspicion and judgment, which rely on sufficient indicia; but about imprudence and temerity, which are lacking in such things.

Greater indices are required for judgment than for suspicion; and to this [judgment] rather than to that [suspicion or doubt]. Resp. 1: Judicium temerarium, cum plena advertentia de gravi malo proximi, communiter est peccatum mortale, contra justitiam. Thus: Fill. 2. Lajym. Chapter 1, section 3, chapter 2.

The reason is that a grave injury is done to the neighbor, for without cause the unjust one is held in contempt when he has a right both to a good name and to protection; besides which, serious evils often follow from such judgments. In confessione tamen non opus est explicare speciem mati judicati, cum omnia uni justitiae commutativae in specie infima adversentur. Escape. E. 10 c. 4. I said: commonly, because if a judgment has mag- nam probability, even though it is not entirely sufficient for certainty, it will be venial; for moral certitude and great probability do not differ so much that it would constitute a grave injustice to judge with certainty what is validly probable, e.g., if judges only have the youth present cum 246 L.

III. Treatise. VI. Of the girl having spoken about the found illicit matter in the bedchamber. From which is resolved that sinning in such cases merely receives a remote venial judgment according to the following successive situations.

Tanquam in secundo tertio quarto et duodecimo. 1. Si non sit grave malum, quod proximo temerè impingis: et sic eum, qui judicat alium esse spu-rium, vel filium Judæi, à mortali excusant 2. If indeed it is grave, but not perfectly perceived. 3. Et tamen si grave sit et perfectè advertis, non est excusatio adhibenda.

If indeed you have failed to notice your tendency to judge ill, you will neither perceive the signs of insufficiency nor doubt them. » 4. Si vero te malè judicare advertas, non tamen signa esse insufficientia advertes, nec de iis dubites. If the signs be sufficient for forming a probable opinion. 5. Si signa sint sufficientia ad opinionem sallern probabilem. Even a mortal sin is not (speaking per se), if one judges only of the indeterminate: because no grave injury is done; Esc. l. c. ex 6.3 Resp. 3 Suspicio et

Dubitatio temeraria. By their very nature they seem to be sins only venial, especially if they proceed from an error of intellect, by which indications are apprehended as sufficientia.

Thus. Th. . Fill. tr. 4 c. 1 q. 5. 2 c. 29 d. 3 etc. contrà multos, qui putant esse mortale. The reason is that commonly a suspicion merely is some kind of incitement to assent: for there remains in the mind of the suspicious person some manner of good estimation of his neighbor; hence it does not constitute a grave injury to him when his possession of good reputation is not totally disturbed; yet nevertheless, some injury is done because a rash doubt has been entertained. I have said, especially if from error: because such a thing, since it is not per se voluntary nor pertinacious, deserves excuse; but if you persist in suspicion from malice, it will be mortal, as they teach: for it proceeds from contempt of another, and consequently is reckoned a grave injury. It is asked whether a rash suspicion or doubt can amount to a grave sin?

The first opinion denies it, and Cui and P. Nar. hold this, to which Lajm. 1. 3 etc. adheres. The reason for this is that suspicion, although temerarious, seems never to damage another's reputation gravely. The second, however, more probable opinion affirms that if suspicion, or doubt without foundation, were to arise concerning grievous sins, such as it would be for a pious Religious frequently to be suspected of being heretical, or of committing incest with his Mother; or for a man commonly regarded as Catholic to be suspected of being a Jew, or an Atheist. Reason, because perhaps a greater injury is inflicted upon them by such suspicioning than if a certain judgment were held concerning their grave ordinary offenses. Thus Lugo, 4 p. 2 n. 177 et n. ro3 who hold this as common and as true.

You ask how suspicion can be distinguished from firm judgment when there is no expressed fear of the opposite, being joined together? » Resp. Cajetanus holds that he who is asked whether he has something for certain responds to himself with a certain or nearly certain appearance; but he who waits for a response deems himself not morally certain, but one who can easily be deceived. V. 2 q. "y p. 1. "DUBIUM, II. What is detraction and how grave a sin is it? 966- What is detraction, and what is contumely? 967 Does it excuse from mortal sin to reveal the natural defects of someone, etc.? 968 When is it licit to betray crimes by disclosing them?" Whether this is permissible to avoid one's own harm, or that of others? When should respect be observed? And when can it be manifested?

And whether it is permissible for the sake of avoiding one's own harm? But how about when reading another's letters with the intention of avoiding harm to oneself? Remission, see 1. 5. n. 70 972 Whether it is permissible

to protect one's own reputation; or by infaming another? 973 Whether it is permissible to infame someone in another place? 948 L.

III. Treatise. VI. Of Get. Before.

And Prae: 979 How does hearing commit detraction, and to what extent is it bound? 980 What if it is from a Superior? 981 What if it is from a particular individual, and even though he can do so, he does not turn away from it? 982 Is it permissible to defame another in order to avoid torments? 983 Is self-defamation permissible? 984 How should honor that has been taken away be restored? 985 What if the dishonor was complete? 986 What satisfaction is required? 987 Does a simple request for absolution always suffice? 988 In which cases is it expedient to omit the Confessor and provide satisfaction for this offense? 989 Is satisfaction due if the offended party has already vindicated himself from continuous offenses? 990 What if the offender is punished by justice or condemned to satisfy? Resp: Detraction is an unjust violation or denigration of another's reputation. It differs from contempt, which is an unjust diminution of honor. Object: because contumely injures honor, whereas detraction injures fame, which is an opinion or estimation regarding another's excellence; but honor is a testimony of another's excellence conceived in one's mind. It differs in manner: because contumely is like a robbery openly against the present person; whereas detraction is most akin to theft secretly against someone absent. Hence, although contumely is graver than detraction, it is nevertheless a venial sin by its very nature, even though it can be committed through smallness of matter or lack of deliberation.

The reason is, because it is more grievous than theft, which is a mortal sin, since it injures the reputation of one's neighbor, which is a greater good than wealth. Here it is asked when contumely is a mortal sin? According to 22: He who... disdains his brother, knowingly, knowingly, will be judged by the Council; but he who disdains him, foolishly, will be a culprit of the fire of Gehenna. Interpreters explain apud Corn. a. The word Raca signifies a man worthy of contempt, or one deserving to be spit upon; and he who speaks such words in Council: for it was only in Council that grave crimes were brought forward. But by the word Fatue is understood an accusation of grievous insult against one's own vices.

These therefore contemptuous words are of themselves mortal sins, unless excused by circumstances of person, or inadvertence, or willful unwillingness to grievously wound the spirit. Thus speaking: This however, in the aforementioned Hic verbum, S. Th., 2, 2, q. 72, ar. 2, ad 2. Thus rightly observed: It must be said that just as it is licit to strike someone for the cause of discipline (such as a Father, a Prelate, the Lord,

or a Master); similarly, for the cause of discipline one may also say something corruptive to someone whom one has corrected with affection. » All are bound to endure contumelies, repudiating any impulse for vengeance: Yet sometimes it will be expedient to repulse contumelies, namely when their endurance is foreseen as attributable to a lack of fortitude or wisdom; or if the common good might suffer, as if by tolerating it, a Prelate were rendered contemptible, and thus the petulance of subordinates were increased: For there is one kind of contumely which is direct and formal, proceeding from a fixed intention to wound the reputation; another kind which is indirect and merely material, resulting from levity and some excess of speech. 1. Detractio alia est directa, et formalis, quae fixe x intentione, famam laedendi; alia indirecta, et materialis tantum, quae fit ex levitate, et loquacitate aliqua.

It is not mortal sin to reveal regularly natural defects of the soul, body, or nativity; such are not moral faults; nor is infamy regarded among the prudent as such, for instance, that someone be stupid, a bastard, or deformed, according to Question 4, Article 2. (Id n. 14. cum ibid. They also speak of defects due to birth, preparation, which sometimes can even be mortal, as to say of an honorable man that he was crucified. IH. Treatise: VI.

Of the most grievous office, or having been a slave: But all these things hang chiefly on circumstances. Often also is there a diminution of the law if another be considered infamous by general names of mortal sins, such as being irascible, proud, etc., although it may sometimes be serious, because those who hear often interpret it in terms of natural inclination and involuntary defect: nor does a grave injury to reputation arise. S. 4: Sylv. Laws. d: 3 n. 18 . 3 t. 3 p. 2 c. 3 n. 3. 3. Similarly, it will not be mortal to commonly refer to » mortal sins, which by reason of the condition of the person » do not notably lead to disgrace, for example, if you say that you have a concubine, that you have fought in a duel; that you are plotting revenge, that an adolescent is wasteful; given to loves, etc. 4.

It may nevertheless happen that by narrating defects even natural ones, considered with regard to his condition and state, you gravely harm him, and thus commit a grave sin: as if you were to say of a grave and man of good repute, whether a Prelate or Religious accustomed to lies; of a serious and prudent man, illegitimately born, a Jew, etc. * (Item, n. 43 cum est, etsi de altero nihil in particulari, sed tantum in genere dicas, v.g. te scire aliquid de illo, quod si dicas, magno illum rubore sis affecturus.) Card. Lugo, d. 14, n. 49. » 5. Crime, or defect of some kind, provided it is true; often it may be disclosed for just causes: v.g. r. When it is expedient for the Superior to know the defects of his subordinates, so that they may be

remedied, as stated above, concerning correction of brothers and sisters, and knowing those who conceal a hidden crime of children from parents, or from servants (or religious from their superior like a father: see the aforementioned law 4 n. 243), in order to effect correction (taking care however that greater harm does not result from revelation), it is commonly excused. 7 c. 10 d. 11 ex Bonac. etc., as when a wife speaks with her husband (or against him), concerning hidden crimes of children or servants. 2.

Reason for counsel or assistance to be sought; yet it is seen that this should be done in such a way that harm to a third party is minimized. 3. Cause for guarding against another damage; namely, if an estimation false is formed concerning his doctrine, probity, and it is prejudicial to others. Wherefore, when it concerns conferring an office, contracting a marriage, accepting a religion, assuming the role of a physician, teacher, servant, or maid, etc., it is permissible to manifest (indeed, sometimes it is necessary) hidden impediments, disabilities, and defects whereby notable inconvenience is reasonably feared; provided that no other reason for hindering exists, and the damage which one fears for the proximate party is greater, or at least equal to the damage resulting from the manifestation of a defect or crime in another. 2 c. 11 d. 12. Here especially is to be adverted to the doctrine of S. 2, where it teaches that he properly detracts from another who speaks ill of him with intent to defame his reputation; but otherwise, if this not be his intention, but something else, then it is different. Reason, because (as the same St. Thomas adds in the cited place): This, however, is not detraction per se, and formally speaking, but only materially; and rather by way of accident.

Wherefore the Holy Doctor concludes that if someone utters words whereby another's reputation is diminished for some necessary good reason observed in due circumstances, it is not a sin nor can it be called detraction. Here it must be said according to P., that the proximate superior may correct this by referring it to the Judge, or Prelate, Lord, or Parent. II. to avoid damage to the public. III. ad tuendum innocentem, puta, si innocens accusetur de homicidio, potest manifestare auctorem; vel si scis furem habitare cum alio ignorantia, potes eum certiorare, ut sibi caveat, ita Lugo D. 14 n. 95 et 13 c. 4 n. 64 cum Soto, Basilio, qui in Regul. brev. interr. 25 ait, bene posse crimen revelari, quando necessitas poscit ut periculo consulatur aliquorum. IV. ad vitandum peccatum mortale.

They add, Lugo, ibid., n. 112, Tournai, ibid., ibid., with others cited. L. III. Treatise VI. On the Eighth.

Bro. and Bro. Ecl. quod unusquisque ad evitandum grave damnum aut vel aliorum etiam in bonis fortune licite possit de- tegere grave crimen alterius; modo nominent ad illum infamare, sed damnum propriam vel alienum vitare: Sufficit autem ut damnum vitandum sit grave, quamvis majus damnum immineat diffamato: Sects vero si damnum vitandum sit leve vel longe minus. Thus, Article 75 with Article 353, paragraph 12. Mazzol. 1:2 p:442 y.5 et hoc satis probabile puto cum Lugo d. D. 44 v.97 et 112 qui dicit: non tene te enique ex justitia, neque ex charitate proximi crimen occultare cum gravi tuo damno. Not from justice, he who does not have so strict a right to his own reputation that others are obligated to guard the truth about him when it is necessary to corrupt it for one's own damage to be avoided: For if it regards the common good, which should not be revealed without sufficient cause, it pertains more to confirm the common good to reveal those things when it is necessary so that others do not err with notable expense.

Neque tenetur ex charitate, quia charitas non obligat eum tanto detrimento: sicut enim non tenebris impedire damnum proximi, etsi majus, cum gravi tuo damno; ita nec etiam tenebris eo casu occultum crimen proximi celare; ita Lug. And this is also true in doubt concerning the gravity of your damage, because in such a doubt the innocent should be favored, as they say, citing Ad. cit. These things, however, are to be understood in such a way that the damage cannot otherwise be averted: and also in such a way that it is not manifested more than necessary, nor rains brought about beyond what will suffice for repairing the damage feared. But here a great question arises: whether, in order to avoid your grave damage, you can reveal another's hidden crime if you have received knowledge thereof unjustly through force or fraud, for example, by opening letters, etc. In this matter there are many opinions: Satis 1. 5 of 2 says that you cannot do so even if you should bear the moral burden and endure it; and the Saint agrees with this. Cons. 1. 6. 6 dud. 9 n. 6. 54 dicit, te non posse, si damnum irreparabile alteri imminent ex illa infamatiore; seuis si reparabilia.

Molin. D; 37 ni 13 censet tunc tantum te posse revelare, quandolonge majus determinatum tibi times. If such books 2c. 1. 1. n. 55 P. Nauru. 1. 2 de 4. 13. Maxsat tome 2. page 443. page 6a; n. 1. Set (parable, ascending.) they say that it is possible for thee to reveal unto whatever grave damnation thou wilt see fit to view, because although thou hast received knowledge through sin; yet in a grave necessity, thou canst use it so far as, even though an unjust theft be made just by it; nevertheless, thou canst use it also, when justice comes, with that necessity, even if there be damage to the Lord.

Between spear; minor sentence, to me more arvi: let the sentence give. Lugonis. D. 1. 4. nq; 1a. (quem sequuntur Croix. 1. 3. p. 2 n. 1333. 4 Sporer de 8. n. 46.) Doct: hic magnus; Theologus, te non posse, generaliter loquendo, uti notitia illa injuste; excepta, cum alterius damno, ob quodcumque damnum tuum; offingendum. Reason, because action: unjust, which you, except by acceptance, obligates thee to address-ment to give all: damages: on account of that, proximate to be encountered. As you have stated, what is objected: it is in the extreme necessity of religion, not to restore even slightly, even if it is believed that he labors under necessity of hunger, as we said on page 309, note 70.

But all (see 1b.) with one voice say that it is necessary to restore what has been taken away, if there be a need: for through that very necessity you have introduced a subtraction from your neighbor in the same thing. Thus. 4. In our own affairs, be thou a revealer of secrets, causing damage to another, bringing about restitution in darkness; through that very thing, by fraud; senet: by extorsion, thou joinest thy neighbor in necessity, suffering such damage. And this judgment may also be attested by: Lugm. 1. 3tr. 3 p. 2 c. 5 n. 3. Then only, if it would not admit: Lugo: from n. 130 Spor, and Croix, etc., could you possibly manifest a crime when it would be; to you, even permitted and allowed, strength: or that fraud, which has existed; to inquire into, to have emerged; to open: And the case would be 1. 3 If revelation would be necessary, for the common good of the Republic 2. If another: is held bound, let justice; reveal the secret, to harm, then, lest great harm. 3.

If those voices of injustice; guilty. Others, it is not permitted to you, to open another's letters, for L. III. Treatise. VI.

Of the Eighth. Before. And before. Lugo, D., lib. 14, n. 102. Sporer de 8:, cap. 56, n. 46. Good, according to Resti. D. 2 q. 2 p. un. a. 8 holds: it is permissible to disclose a secret in order to avoid thy great harm; even if thereby another person would be exposed to the danger of death, provided that such disclosure is not made through similitude of vice or fraud.

Reason: non boundest thou by so great a damage to thy own detriment in order to avoid the proximate harm of another: and it is not presumed that any one hath undertaken such an obligation unless from circumstances it clearly appeareth, as add Lugo d. D. 14 n. 116 et Croix 1. 3p. 2 n. 1232. It does not hinder to say that it regards the common good for a lady to keep secrets. To pluck away, lest human commerce be disturbed: trade. Lugo responded thus, as stated above: this is true, unless the observance of secrecy intervene and cause damage to another, for in that case it contributes more to the common good so that each may know what sort he

is, lest others be grievously misled through ignorance and perniciously deceived with injury to those who inflict harm. Moreover, if she who is seated can lay aside that commission to avoid damage to an innocent person, as we have seen from the common Decretals above mentioned: then it should be the one of lower condition himself to veil his own harm by avoiding damage to another? I except nevertheless, as the common teaching of the Doctors declares, unless such a revelation brings about a serious accompanying harm. We have spoken of a grave matter; for if it were light, you could even prohibit the revelation of a secret to avoid a grave damage to your own property, as Sanchez says in d. 2 n. 5 and Hac. l. cit. thus.

This is what a secret committed to one's own properly consists in—namely, a secret committed when you have not promised to keep it under an obligation and even with willing damage: certainly you are able to make it known; for no one is considered bound by a secret if the damage is less than grave. And this. From: as cited above. What, however, is to be said if you were promised secrecy regarding a not yet revealed secret, and even concerning the disposal of one's life, would it be permissible to reveal it in danger of death? It is sufficiently probablely affirmed, saying that then you could and should be disposed to preserve your life, because it is not licit for anyone to betray their own life: and this opinion is supported by 3 tr. 3 p. 2 c. 5 n. 4. According to another opinion, however, defended by him himself in book 3 chapter 3 note 4, where he holds with P. and Vega that because of the precept of charity, everyone is bound to prefer their own life to another's. But since it is also very probable and more common for the opposite opinion to be held, that it is permissible to omit the conservation of one’s own life for a noble end, namely to preserve another’s life, as Lugo D. 10 n. 48. 2 c. 9 n. 29 et 31 and Prado hold, because this is not directly bringing about one’s own death, but failing to protect one’s life, which is permissible for a just cause: Therefore very probably DD. cum Lugo D. 14 n. 115.

The sentence "Mol." translates to "Mol." in English. D. 37 n. 10 et Croix l. 3 p. 2 n. 1232 cum Hawn. dicunt in casu proprio te satis obligari ad servandum secretum etiam cum discrimine vitæ, si id promiseris; aliud est prodigare vitam, aliud omittere (ut dictum est) ejus conservationem, ut promissum serves. How indeed do those who sin by opening and reading foreign letters commit a transgression? See l. 5 n. 70. How indeed will they who sin open and read foreign books?

Hence also, si quis injustè laedit famam tuam, nec potes eam tueri, nec recuperare alia via, quam imminuendo quoque famam illius, id licet (dummodo falsa non dicas) in tantùm, quantùm ad tuam famam

conservandam neeesse est, nec magis ledas quam ledaris, collata tua, et alterius persona. See p. 3 n. 1217 and Consentius also agrees, provided that this be done in a judicial proceeding and you can in no way prove the guilt of that person; because then the defamation of that person will profit you nothing. You likewise sin, if you speak falsely, according to III. 258 L. III. Treatise.

VI. Of « cebat: It is probable that one does not commit a mortal sin by imposing a false accusation on someone in order to defend his own justice and honor, etc.) * » 7. If anyone narrates to a friend for the sole cause of solace and not with the intention of detaching someone: that an injury has been done to himself by another, it does not seem to be mortal sin, even though some infamy may thereby accrue to the author; for such infamy is to be imputed to him. (This is very common according to n. 46. And common with Bon. Sayr. cum aliis, excusari posse saltem à mortali, famulos de tegentes injurias illatos a dominis, uxores à viris, filios à Patre, Religiosos à Prelato.) * Cavedum tamen, ne dicatur pluribus, vel apertius nominetur persona quàm necesse sit ad consilium, vel solatium, . 8 d. 2 d.4 Card.

The law of Lugo of the fourteenth day teaches that famuli (at least from mortal injury) may be excused for having inflicted injuries upon their masters, wives (which are inflicted by husbands), children (who are inflicted by the father), religious persons (by the prelate), only as a cause for mitigating pain. If you reveal an unknown crime to one prudent and silent man, it is as if no one had said anything; thus, that damage is considered light: and so the law of Lugo of the eleventh day with reference to R. 22 and paragraph two teaches the excuse of a penitent who reveals a complicit in confession: they say that such an opinion is probable. But this seems insufficiently safe for all, because injury to reputation is considered grave even among one person, as is evident from the rash judgment: indeed, often some have felt themselves grievously injured before one serious person, more than before three or four others. Under which circumstance do they commonly consider it a mortal sin? C. Lugo l.c. Sed contra haec sententia, nonne probo revelare secretum alterius uni vel alteri viro esse mortale sufficit ad probabilem opinionem, ut dicunt 2 c, 11 n. 70. Cajet 2. 2 q. 73 art. 2. item .

Covar. P. Navar. and others. Reason, because since defamation consists in the common estimation of men, one is not considered absolutely defamed who has lost his reputation with only one or two individuals. And openly adhering to this opinion: To 3. it is to be said that if someone reports a fault of another to the prelate, intending either for caution in the future or something of this kind, which appears expedient for the amendment of the

other person, he does not sin. If however he refers to the Prelate or to some friend of his out of malice, then he sins mortally.

If, however, through carelessness he tells this to someone (that is, a crime of another) in such a way that no further harm results to the accused person, neither in terms of infamy nor reproach, then he does not sin mortally, even though he acts carelessly. Therefore, the Holy Doctor thinks that the infamy which will be revealed to one person alone does not arise unless infamy arises from elsewhere for him, namely, if another should make it manifest to others. Accordingly, says S. Thomas: if you reveal the sin of your neighbor out of malice, namely out of a depraved mind seeking to harm, then you cannot be excused from mortal guilt. Neither say that that word is to be understood as inadvertence from incaution; for from this there never results mortal sin; but it is altogether understood as imprudence, or levity of mind, which is nothing more than venial sin; and then only will it be mortal, when from it the infamy or vituperium comes to the sinner. Nor does it hinder the equality of judgment rashly taken by Busemb. for it is rightly responded to in 2. 2 q. 60 art. 3 ad 2, where Thomas says: "But this very thing with which someone holds a bad opinion of another without sufficient cause, he contemptuously despises him unworthily, and therefore he himself suffers injury."

This is evident for the reason that, if a rash judgment were mortal on account of damage to another's reputation, even though you have justifiable suspicions and are informed solely by just indications, nevertheless such a judgment would still be injurious. III. Treatise. VI. Regarding the cares of that hidden crime, you would still have grievously sinned, which no one would say; therefore, malice of rash judgment is not taken from the damage of infamy, but from contempt or injury, which is inflicted upon the proximate person.

8. A crime simply public, whether by notoriety according to law or by deed, manifesting to others who lack it, is not a mortal sin of injustice: because thereby the author himself loses the right to reputation, since reason and evidence of the just judgment prevent inquiry into an unjust injury. Which is confirmed by custom, commanding the publication of public crimes. I said: it is not a mortal sin of injustice: because to disclose in that place where fame would not have been lost, or only after a long time, or otherwise with great impropriety on the part of him who committed it, often can be a mortal sin against charity, as Less, Vat. Tul. l. 5 c. 65 contra C. Lugo d., 14 n. 59. 5 c. 3.

It is asked whether one commits a mortal sin by revealing a crime in some public place while it has not yet become known in another place where its

knowledge has not yet arrived and will not arrive within a brief time? Concerning this doubt, there are three opinions. The first opinion, held by Dicastil. . Tournely, Cuniliati, etc., is that he grievously sins against justice, because the sinner is still in possession of his reputation in that place. The second opinion holds, that he has grievously sinned, but only against charitable regard. Reason, because although the Accused has already lost his right to reputation, nevertheless he would grievously be disquieted if it should come to light that his hidden crime had been.

The third opinion is more common, which the Cardinal de Lugo holds regarding the matter. D. 14 n. 59 (et hic vocat communem, et veram) cum S. Antonino, Cajetano, Ladesma, et Joanne. Greater, and caput titulus c. 14 n. 61 cum Navar. Bannes, Serra, Filicaja, non peccare graviter nec contra justitiam, nec contra caritatem. Many bring forward reasons for the aforementioned Authors on this matter.

The reason seems more probable to me, that notorious criminals may be known for the public good, so that all may beware of them; for the public good certainly ought to precede the private reputation of a man. This reason, however, holds good only with regard to those crimes which make a man pernicious and to be avoided by others; such as are the crimes of murder, treason, prostitution, scandalous public immorality, and similar ones. Neither does it hinder to say that the accused possesses his fame in that place, and therefore cannot be deprived thereof with mere probable opinion. For it is answered that at the same time when his crime becomes public, on one side he himself already loses his right to his good reputation probabiliter, and on the other side the Community acquires a right to acknowledge him as someone to be avoided; and since then his possession is uncertain, even the possession of others regarding him becomes also uncertain. P. Concina (Compend.

In this question he distinguishes and says that when a crime is publicly notorious, that is to say, if it has been publicly exposed, then it can be manifest in every place; but since it was public only by reason of fame with regard to its manifestation, he concludes thus: All must be cautious, because this public fame is easily feigned. 9. Similarly, it is not a mortal sin against Justice to inquire about the cause of captivity of some person or to speak thereof, for since captivity is public, its cause also seems to have been made public. Wherein in the same manner he excuses him who refers a public offense, by simultaneously offering repentance and amendment; otherwise, if silence is kept regarding the repentance which was made: thus he says has sinned the historian; by describing the public sins of the dead, and not offering repentance or amendment, if they have repented. > 10.

Similarly, to manifest a crime that is not yet public; nevertheless, morally certain to become public soon (whether by the evidence of the fact or by the judgment of the Judge), is not mortal, because it does little harm, unless grave dangers follow from such anticipation, e.g., in office, etc. Card. Lugo l.c. n. 92. 362 L. III. Treatise.

VI. But in order for some crime to be considered public, it is decreed 3 p. 2 n. 1219 and : To be public is a crime if there are forty people within some vicinity who know eight from different households: Also, if in a city of five thousand citizens, forty are dispersed throughout it: Stephen adds with others that a crime can be considered infamous if its reputation spreads through the greater part of the city, community, vicinity, or parish. Item Mol. says: "To be infamous in a Kingdom is called infamatum, who has already been infamous in a Curia, or in some other illustrious place, from which easily the fame can spread to the Kingdom." §76. Infamous by one crime to another greatly to affix infamy is merely venial: for example, if you say about an adulterer that he sent love letters, because then the infamy is not notably increased. Nor if you say about a public thief that he is perjured; nor if you say about a servant gambler that he has omitted celebrating Mass and does not care for his family. Thus, however, concerning a disparate and unrelated crime to infamy, it is mortal: because one who is infamous in one species of vice does not lose the right to reputation in other virtues.

Tant. d. 4 de just. q. 8 d. 7 n. 141 ex . * (Sic etìàm dicunt . cum V. detractio Pa- lud etc. » 12. Detraction arising from loquacity is mortal if it imports a grave injury to the proximus; this should be noted: because, although the injury to another is not directly intended, yet it is indirectly and implicitly willed, and is equivalent to formal. But it will be merely venial, if serious injury does not follow, because, namely, it is commonly not taken seriously nor believed. Similarly will it be venial merely, if heard reported, as heard merely, that is to say, affirming nothing concerning the truth of the matter, but rather doubt about it in one's own signification; so that no disgrace should be thought to result therefrom, nor the hearers reasonably credited. Thus contrary to 13 c. 6 docet Tann. 2 2 d 4 q 8 dub 7 n 121.

» Esc. E. 10 c. 4 n. 40: eo quod diffamatio, si forte sequatur, imputetur audienti, si credat. The same is correctly limited by C. de Lugo, l. cit., unless a serious damage follows from the manner of narration, or from the levity of the hearers (who are rashly credulous and vulgar), which you might possibly foresee. Hence gravely sins against justice you commit if, referring to a serious crime, you add that this was said to you by a man

worthy of credit, because you provide sufficient ground for believing it. V.

R. 18. It is asked, whether to confess secretly sins heard from others, but not seen, so that they are not known by others, constitutes a mortal sin? It is to be said, I. You do not commit a mortal sin if you refer to such hidden sins in that manner, so that it is not probable for you that any infamy will arise from it, insofar as others are not likely to believe it. It must be said secondly. Si coram his referas, qui probabiliter credituri sunt ex sola levitate vel malitia, non peccabis contra justitiam, quia non es causa efficax damni; sed per accidens, at peccabis contra charitatem, quia quisque tenetur impedire grave damnum proximi quantum commodè potest.

III. To be stated. If finally you report it in such a way that those who hear it will probably and justly be credited with it, for example: if you assert that you have heard from a person worthy of credit, then you also sin against justice, because you give sufficient cause for believing the evil. Thus. 2 c. 11 d. 5. Lugo, D., lib. 14, n. 56 et 57. Anton., lib. 3, p. 2, n. 1207, l. c., n. 24 (et hoc e conversò, si referas criminem tamquam auditum à personis). III.

Draw. Six. Of an unworthy faith, for instance, when enemies defame it, and then one does not sin mortally with respect to those who are defamed; rather, it is less grave than killing: yet still mortal, and obliging to restitution; 2 c. 11 d. 21. Bonaventurae, de fide, dissertatione prima, quaestio tertia, paragrapha secunda. » 14.

It is not mortal to speak evil of some unknown or indefinite person, for example, saying that there are many wicked people in such a place, or that one canon in such a college has committed a grave sin, such as simony, teaches Escob. E. 10 c. 4. Obscure. Quod. 7 c. 10 d. 4 ex Bon. » 15. They gravely sin, however, who detract from some Order or rule of Religious in common, or from a Monastery, saying, for example, that there is evil living and regular observance is not kept therein, unless it be entirely notorious: they gravely injure thereby, and are held under mortal penalty for restitution to the whole community, from which Superior's remission excuses.

». Such a thing, however, is sufficiently confessed if one says, I detracted from some Religious Order, or Monastery, whether it be a conventual community or otherwise, teaches Lugo and . conf. Chapter 2, Article 1, Section 16. Similarly mortal is it to name a monastery or a religious order tacitly, by whose means someone has committed some grave hidden sin,

for instance adultery or fornication. . » 17. To be explained and in confession: whether from one and about how many; or rather from one alone to someone he has taken something away. Thus probably Bon. de sacr. d. 5 q. 5 p. 2 § 3 diff. 3 n. 16 et 21 ex .

But C. Lugo d. 16 n. 125, 130 et 149 ex Nec omittendum, si quem infamaveris libello famoso; cum id sit genus detrahendi gravissimum, et ad plurimos pertinens. Not, however, necessarily to be said in what genus infamaveris: because fame is always of the same species in the genus of morals, Card. Lug. d. 16 n. 265. 18 Peccat mortaliter contrà justitiam, et tenetur ad restitutionem ratione cooperationis, qui audit detractorem, eum excitando vel animando efficaciter: qui vero lætatur tantùm detractione auditâ aut licet non lætelur, qui non impedit cum commodè possit peccat mortaliter contrà charitatem vel venialiter; non tamen tenetur ad restitutionem nisi sit superior pater vel dominus: hi enim ex officio tenentur impedire subditum ne alteri injustè noceat. I said, if it can be conveniently done: because he does not sin who thinks that his admonition will profit nothing; or from fear of some great inconvenience arising therefrom, or from a reasonable reverence, out of respect for the authority of the detractor.

Then he must depart if conveniently possible, showing a sadder face, or turning aside with another speech, I. Because he who hears it often does not know whether what is said is notorious, even though he himself may have forgotten; and in a doubt concerning why the detractor will be condemned, many are deceived, thinking that as soon as something is heard contrary to their neighbor, they must refute it immediately. * (Receive this, if the detractor be a lost man; as rightly he says.) * For, when the detractor begins, it often happens that the neighbor is better consulted by allowing what has been said to be completed than by interrupting it. For if distinctly explained, it is often not so severely apprehended as it was conceived at first. Because often in a serious offense you cannot correct it. Because often another has a just cause for manifesting it, especially for one alone, C. Lugo 1 c. n. 128.

V. Reply 24 and text 5 marginally. R. 25. But these ought to be explained better. It is asked, under what circumstances does a listener commit sin by detracting?

Resp. Quomodo peccet auditus detrahens? I. Quomodo peccet audiens detrahentem? Whoever leads another to murmur certainly sins gravely and contrary to justice. Resp. II.

Qui autem non inducit, sed tantùm gaudet de detractione gravi, pec- cat graviter, non contrà justitiam, sed contrà chari-tatem. III. Treatise. VI. Regarding the age, when one takes pleasure in a serious harm to another; similarly with other cases, St. Thomas 2. 2 q. 73 n. 4 Excipiunt c. 4 de Imò Eblén. 263. . de 8 . et Reg. ibid. say that he does not commit a grave sin, even if he takes pleasure in the very detraction itself, not because of hatred or joy from another's harm, but out of curiosity or vanity; and they derive this from St. Thomas who, at the aforementioned place, teaches only that it is serious when it pleases him to detract due to his hatred of the one from whom he takes pleasure in the detraction.

Resp. III. Superior sins gravely more in hearing detraction than he whose reputation has been detracted does, if he does not avert it when he can easily do so; because there lies a special obligation upon himself to correct the detractor or to prevent harm to the disgraced person, S. Th. eod. l. c. Lugo D. 14 n. 133. But then the Superior will sin against justice, and will be bound to make restitution? The first opinion, when Buscema affirms this here, states that if the Superior is a Prelate and detraher; because he himself is bound by his office to prevent it, lest the subject harm another.

The second sentiment asserts, according to c. 4 n. 70, that if the Superior is infamous, he is bound by his office to counteract the infamy for the subjects, which officiates for their promotion to spiritual good in others. However, the third opinion perhaps more probingly denies that there is a sin against justice, nor does it excuse the Superior from detraction when he himself is not bound to watch over the good of another non-subject (but even a grave fault against charity and also against justice is incurred if he is a Bishop or Parochial Priest and does not correct his subjects, because they are bound by justice to correct their subjects, according to what was stated in n. 360). But it is due; nor the Superior infamed, since it does not pertain to him by justice to attend to the temporal good of the subjects. That is to say, what impedes an individual from being disgraced, so that it hinders the spiritual progress of others, seems to occur by chance. Sotus, Rebeli. et Cap. I.

Dqb. II. Concerning the Precept in question, and Lugo agrees, D. 14 ex n. 130. Well indeed he noticed: is it more serious for an individual to sin gravely by failing to prevent detraction when he can do so conveniently? It affirms Bus. htc with Lugo, ibid., n. 72.

But because the authors of the related opinion add more limitations which Bus. has mentioned above; they hold absolutely: except for infamy, no other damage should arise from detraction. Thus 7. 2 c. 11 n. 22. : who in 2. 2 q. 73 a. 4. thus teaches: If however he does not reject the detractor's

offense because it displeases him, but out of fear, or even through negligence or some timidity, he omits to repel it; he commits indeed a sin, but one much less grievous than that of the detractor himself; and usually it is venial. Moreover, the Holy Doctor usually adds (as noted by Sal.), because he later says that he commits a grave sin in three cases namely, 1. If it were a Superior. 2. If another harm were to threaten the neighbor. 3.

Let it be a lie for the sake of the ultimate end that you have constituted in a creature out of fear. Furthermore, besides these cases, it is also noteworthy that the doctrine of S. Th. 2. 2 q. 33. a. 1 ad 3., as extensively explained in l. 2 n. 36, teaches that one who omits to make a correction out of fear may be excused from a mortal sin, provided that it not be established that the correction would be beneficial. Because in this matter it is very difficult to establish that censure brings profit and that detractors easily offend otherwise, lest they increase or confirm the detraction: from all these reasons combined rationally can the common opinion be sustained, excusing 268 L. III. Treatise.

VI. From verse 25 of chapter 23. Wasting... may the sad countenance take away the tongue. Reason, because these actions are true corrections. See. 373.

You will ask: 1. whether it is permissible to defame another in order to avoid grave torments? Resp. 1. It is permitted if the crime be true: because he does no injury to another, since he has the right to reveal that in necessity. Resp. 2 Si crimen sit falsum, non licet; quia esset mendacium perniciosum. Sylve. tamen, et Narr.

They think that it is merely venial if only disgrace follows and afterwards it is revoked, since it is not an efficacious disgrace (See infra 1 4 n. 277.) * Do you ask whether self-disgracing is permissible? » . and . 3 t. 3 p 2 c. 4 n. 14. because it is not contrary to justice, since he is master of his own fame; nor is it contrary to charity, because this does not obligate one to conserve externals, except insofar as such is required for the preservation of one's own health or that of one's neighbor. I have said regularly: because it can be mortal by accident, for example, if your fame is necessary for a gift, or if to you or to others some damage to life should follow from the same infamy. It is not mortal to impose upon oneself a false crime for the purpose of avoiding severe torments, from which also delay will follow: because a man is not bound to guard his life against such great sufferings, nor is it said that one commits suicide by doing so, but only that one exposes one's life to death for just cause. . Sylv. inf. lb. But it must be noted how the honor wrongfully taken away is to be restored?

It is certain that, if a man has been publicly deprived through contempt, he should also be publicly restored before those who were present at the dishonor, or at least in such a manner that satisfaction may easily reach their knowledge. It suffices that satisfaction be made by another person, which begs forgiveness in the name of him who has caused dishonor, etc. Thus according to the Trullan Council and . But it is questioned I. Whether, if the contemptuous act has been secret, there shall be a satisfaction? They deny Mol.

D. 46 ex n. 5 et Laym: 1. 3 tr. 3 p. 2 c. 7 n. 6. But these Authors are led by a different reason; Reason. The reason, however, for Molina is that although damage has occurred, yet that has passed away, and furthermore does not persist, since thereafter the offender presents the demanded testimony of honor as now offended, as it is supposed. But I think it must be affirmed altogether with the common and true opinion which they hold. 2 c. 11 n. 144. de 8 Roncag. de 7 Anton. Lugo D. 153 n. 54 quidicit, homo omnino tenendam, referens ex Rebel. contrariam reprobatam fuisse Romae a Censoribus Societatis IESU.

Reason, because against the reasons of the prime sententia it is confirmed in such a case that harm is beneficial and that harm will persist. That damage exists does not seem capable of denial: for, as certain is held by S. Th. 3 2 4 72 a. 1 ad 1 in every contumely, even yet hidden, besides injury there remains damage to honor unjustly clung to. For each one has the right that his due honor be preserved. That this damage will persist is equally beyond doubt, since the honor of the one offended remains injured until it is repaired by due satisfaction: but it is not repaired through common signs exhibited afterwards, as Molina supposes; for after an injury has been inflicted, it does not seem to men that he honors another as he should if he reveres him with customary honor without asking forgiveness for the contumely imposed. On the contrary, it seems rather that he despises him. Moreover, themselves 290 L. III.

Treatise. VI. Of Molina and [it refers to] chapters 5, verses 23 and 24. If... you bring thy gift to the altar, and there rememberest that thy brother hath aught against thee,..., go thou first and be reconciled to thy brother. Seek.

II. How is the restoration of honor to be accomplished? Resp. that satisfaction be required which is deemed sufficient to manifest the estimation, according to the condition of the person offended. If indeed the one who has caused dishonor is a Superior, and he honorably causes him

to be dishonored, greets him at home, shows benevolence, etc., but if it were an Equal or Inferior, then greater satisfaction is required, namely that he anticipate him in greeting, yield him place, ask for forgiveness; this mode however is prior for compensating contumely: Otherwise such a petition for pardon is not necessary; unless otherwise satisfaction cannot be made. Thus in 2 c. 11 n. 244. c. 4. n. 113 et 114 with Cajetan etc. Therefore they add, that a Prelate should never be required to petition for venial sin from a subject, nor a master from a servant, nor a husband from his wife, nor a nobleman from the plebeian.

Seek. III. Is a petition for indulgence always a sufficient satisfaction? Asserting: Article 145 with Bonaventure, Chapter D, Article 115. But they deny it, citing Lugdunum chapter with Saint Anthony: For when an injury is grievous, for instance, if a subject dishonors his Superior, or a plebeian strikes a nobleman, beyond the petition for forgiveness, one is bound to seek that through bent knees, or some similar act of humiliation: And this opinion is more probable.

Moreover, I think that it should be carefully observed that frequently it happens that the Confessor omits to admonish the penitent in good faith regarding satisfaction to be rendered in many cases where another has been dishonored: And I. If he foresees that the warning will not prove useful but rather harmful, according to the rule to be mentioned below in no. 6 io, since experience shows that penitents easily promise such satisfactions but find it difficult to fulfill them in practice out of shame or apprehension felt later regarding this matter. II. Si prævideat monitionem non profuturam, imò potiùs obfuturam, juxta regulam infra dicendam de 6 n. 6 io dum experientia constat quod penitentes facile tales satisfactiones promittant sed difficulter in facto esse adimpleant ob ruborem quem postea in hoc sentiunt vel apprehendunt. If he thinks it probable that he will more readily refuse than desire that public satisfaction, lest the memory of the injury received return among others, or lest himself be more affected by shame, as Lug. D. 15 n. 58 cum Mol.

Then truly Lug. ibid., perceived that another way must be sought for honoring the peculiarily offended one with extraordinary actions in which petition for pardon might more appropriately be contained. III. Likewise it should be said, if a probable danger exists, that in the act of satisfaction the hatred between the one offended and the offender ought to be renewed. If from the signs it shall clearly appear that remission has been made by the offended party, namely, if he shall spontaneously approach the offender and treat him with great familiarity and in a joking manner, and similar things. But it is noted here n. 326 cum etc., that simple familiar conservation of the offense does not suffice for presuming

remission: For many indeed lay aside hatred and pretend injury accepted to avoid a stain or some other harm; but they do not truly forgive satisfaction.

Seek. IV. Whether, if you have incurred a vindictive punishment; would the offender be released from the burden of satisfaction for the contempt suffered? It seems that this is not the case, because it does not appear that you will recover your dishonored honor by inflicting harm upon the honor of your offender. But it must be affirmed according to the Decree of Lugo D. 15 n. 58 and the common sentiment.

Reason, firstly because by vengeance it is already deemed that you have been satisfied, and secondly because your offender, by tolerating a subsequent injury, seems to recognize his guilt and to satisfy himself for the offense previously inflicted upon you; rightly does Lugo, n. 60, hold that if the injury inflicted by you exceeds your first offense notably, you should at least make satisfaction according to the excess. Question. V. Whether, if one is publicly punished by a judge for an offense, one is still bound in conscience to offer satisfaction for the injury incurred? Lugo most probably denies it: 15 n. 61 cum communi.

Reason, because the punishment inflicted itself 272 L. III. Treatise. VI. It seems sufficient to repair your honor by depriving you of it further.

Moreover, and even if, being coerced by the Judge, you have provided the due satisfaction: then indeed, although coerced, he has now truly given testimony to the estimation of your dignity. I said "debitam," for if the satisfaction imposed by the Judge is not sufficient to repair the honor taken away from you, there still remains an obligation on his part to restore it to equality. ## DUBIUM III. ## How and in what manner should fame be restored? In what way ought fame to be restored? And whether among listeners also mediators? What if you have publicly disclosed a true crime? What if you have unjustly blackened another's reputation through false testimony? Is it then necessary to make amends for damage, if you have become aware of the reputation and do not restore it? But if one unjustly defames a true crime, is he bound to restore full damages? 995 What is notable concerning the infamous libel? 996 Is there any origin of damage from a false report? 997 What excuse is there from restoring the reputation? 998 If judges previously decided and then erased the matter by oblivion, what is to be noted? 999 When can restoration of reputation be compensated if the other party renounces restitution? 1000 Is it possible to compensate for a false report with money? 1001 Can one who has been defamed restore his own reputation with money? 1002 Does any excuse exist from restoring due to danger of life or personal infamy?

1003 If the defamed person forgives restitution, what is to be noted?

And whether this may be remitted? Indeed, if anyone has narrated a true crime, he should, as far as possible, abolish the opinion conceived among listeners by saying, for example, that he spoke ill, committed an injury, was deceived, etc. Or, if this means little benefit, he can commend him in other matters, mitigating the crime and procuring honors for him in another matter; thus his fame is gradually illuminated on one side to the extent that it had been obscured on the other. If however you have imputed a false crime, you are bound to retract this openly (and if need be, by means of an oath).* (It is sufficient for the oath that witnesses be employed; as Navarrus holds in their treatise on contract before those to whom you spoke, and (speaking per se) before whom the infamy has reached, whether mediators among the listeners or otherwise: according to 2 d. 4 q. 6 d. 6 n. 146. It teaches Cardinal. Because you have caused all damage to reputation, you must repair it openly. It is permissible sometimes to say that you have sincerely been deceived, and that things are otherwise situated, having been ill-informed.

V. 3 t. 3 p. 2 c. 7. 3o. I have spoken; for often such an excuse from this obligation is procured accidentally with respect to mediators by reason of moral inability: at once because what he withdrew among immediate parties he implicitly committed to them, so that they themselves may indicate this withdrawal to others, if perchance they reveal it to any. That is confirmed by the practice of confessors, who are obliged only to retract before those before whom they themselves have confessed. » See » It is asked whether an infamer is bound to restore fame not only before immediate auditors but also before mediators? The first opinion, which Lugo holds.

D. 15 n. 15 cum Navar. . . Croix lib. 3 p. 2 n. 1242. Roncagl. de 7. Precept. Cap. 3 Quæst. 1. Concise treatise 4 page 670 note 5. Contin.

Tournely p. 378 distinguishes: If you have withheld fame from listeners whom you thought would not reveal it, you are not bound to make restitution to mediators of those listeners, because, since you did not foresee harm, you are not bound to remedy that; such a harm, if it occurs, happens by chance. Secondly, if you have foreseen that others might easily spread the news. The second opinion, however, which (practically speaking) they consider probable, he [Tournely] distinguishes: 2%4 L. III. Treatise. VI.

With Holzrn. from the Cross at the cited location. Salmant d. n. 122 holds

that it suffices with very great likelihood to make restitution to the immediate parties; firstly because making restitution to all mediators is often morally impossible: secondly because through such a retraction before the immediate parties an obligation is already imposed upon them to retract elsewhere. But notwithstanding this, the first opinion seems more true to me; for although you are bound by no necessity if your listeners have already withdrawn their assent elsewhere; yet when they neglect to do so, you are still bound to repair the damage as far as is morally possible: Thus, if your enemy has set fire to your grain-field foreseeing that it would easily spread to his neighbor's field, you should certainly make good the whole loss: since each one is bound to restore all the harm caused by his own wrong-doing. Notandum autem hic, quod cum fama sit restituenda ab eo qui verum crimen propalavit tres modi à DD assignantur: I. Mode, ut docet S. Thomae 2. 2. quæst. 62 art. 2 ad 2 est, si diffamator dicat: "Secus mal ditisse, vel quod injustè eum diffamaverit."

But this mode, as Cajetan says, is considered most fitting in general: that if the restoration of reputation be accomplished by some other means to the detriment rather than to the benefit, then it would be better indirectly through an opportunity thus offered, to speak seriously and repeatedly with honor about the injured party, or to treat him with honorific regard. Thus Psalm with Cajet. d. n. 130. The third mode would be to assert: If one has said that he spoke falsely, eaten falsely, been deceived, or lied. And although Sotus denies that this mode can be employed, in note 131, thinking these to be true lies; yet Lugo says probatively in decision 15, note 30, third chapter 6, note 14. Wigandt d. 333 n. 104. n. 110. 2.

R. 2. p. 451 cum communi, ut asserit, et n. 233 cum Villal. Sayr. The aforementioned words are not lies, but true allegories; for, as S. says in Article 1: In Scripture, sins are called falsehoods and lies according to Psalm 4. Why do you love vanity and seek after lies? And the same is found in Jeremiah 8:10. The Prophet even to the Priests all do make a lie, that is to say, commit a sin.

Therefore likewise he who has sinned can rightly say that he has spoken falsely or has committed an error. Hence, in our case we can properly be restrained, nay, if necessary, to use such ambiguous words; as S. Thom. in 4. D. 15. quæst. 1. art. 4 q. 2 ad 1 docet, famam proximi omnino modo possibili reparandam esse. Thus. n. 133. 1.

A confessor ought, like a preacher, to well instruct his penitents and admonish them concerning the avoidance and rejection of common vices. 2. Confessarii est uti et Concionatorum bene instruere suos et monere de restitutione ac fuga vitii tam communis. He who, acting in good faith or

being led by a probable error, said falsely concerning another without formal lie (and with subsequent material injustice in intellect), is bound to make reparation; although not so strictly as he who defamed through formal injury: for the latter is held to restore even with equal detriment of his own reputation; but the former not at all, except insofar as he can suffer some notable inconvenience. Mol. . Lug. d. 15 n. 4. Similarly, he who reported a crime against one person, which the listeners misunderstood to be about another, although not from justice (for it was the cause of the error on the part of the listeners that led to the unjust damage), nevertheless is bound by charity to make restitution, since he can prevent a serious harm to his neighbor without suffering any detriment himself.

However, it should be noted that such a material detractor, if conveniently able to do so upon being informed, is bound by justice to restore the reputation; in like manner, he who sets another's house on fire without fault is bound by justice to extinguish the fire; otherwise, the damage that follows is imputed to him. Thus commonly. 2c. 11. D. 22. Lugo d. 15 n. 4. . 4. n. 120 et 121. 376 L. III.

Tract. VI. As for him who unjustly has defamed another, let him be held responsible to make full restitution for the damage incurred as a result of revealing the truth about his crime? Sotus denies this, saying that one is bound only to a part of the damage, since the harm results not only from the manifestation but also from the crime itself committed; and this is considered probable by Bonac., p. 3, 2 n. 1240, and Lugo, Mol. 3.

He who has detracted from another by means of a notorious libel is bound, so that "the restoration may be efficacious," to effectuate this through contrary writings or public revocation. Therefore, Bonac. on the second day of testimony. Question 4. page 9. It is to be noted that the libellous document then becomes efficacious when scripture, even though brief, is presented which contains a hidden defamation of some individual, so that it may become public. Wherefore such a libellous tract would not be, if it had been composed for ostentation and display, but not for the publication of evil; or if the infamy had already become public; or if someone were to bring forward a defect in circulation for the public good; or if someone were to write jestingly rather than gravely.

Thus it must be noted according to no. 49, the author of the libellus is deemed culpable and subjected to penalties, even he who attaches some infamatory sign to the door of another's house, thereby publicly defaming him. They are also called infamous libels and schedules denounced before judges against someone even without naming the accuser, on account of

which judges are prohibited from proceeding to inquiry according to c. Inquisitionis. § Tertia de Accusat. Notandum III. As regards the penalty against those complicit in such libels, there is an excommunication to be imposed according to c. Qui alterius 5 q. 11. But if the libel is against the Pope or a Cardinal: otherwise it would have been reserved, if the libel is against the State of the Minor Orders, or Preachers and Predicators privileged in communicating, as Bon. ibid. n. 41.

Not however, if it be against a particular Religious. 4. If from injury to reputation another also suffers loss of fortune, so that, if deprived of office, he loses hope of a wealthy marriage, has lost his dowry, etc., then too reputation should be restored and that damage compensated; at the discretion of prudent men. (According to particular estimation; but truly it must be noted that foresight entirely requites such damage in advance, at least in common.) See what is said in no. 613. Indeed, the obligation of restoring reputation, since it is purely personal, does not pass to heirs: whereas the obligation of compensating for that damage, because it regards the goods of the defamer, does pass to heirs: as cited in c. 6 n. 7 with Lugo, which excuse from the restoration of reputation? And thou art excused from restitution of fame if thou art entirely unable to do so. (But he who is unable to restore it wholly is bound to restore so much as he can.) 2. If a hidden crime, which you have mentioned or one similar to it, becomes public through another reason. (As stated by Lugo, n. 139 etc., or if the listeners do not believe.) 3.

If fame has already been recovered in some other manner, such as through the purification of the infamous person, by the probity of life, and with the testimony of prudent men. . 2 c. 11 d. 24. (Thus also . 137 with.) Lugo, section 3, chapter 4. If it has been prudently judged that the matter long since deleted is now obliterated. In what case above all is prudence most necessary: for sometimes it is more perilous to withdraw by renewing the memory. See.

Cardinal. Lug. d. 15 s. 3 n. 35. What is to be done if there is a doubt whether the infamy has been relegated to oblivion? They distinguish DD. If the crime, for which one is infamous, has been true, according to 2 c. 11 n. 100, it is not easily revocable to memory, unless an evident danger be present that that infamy will return to memory by some other way.

If however the crime has been false, the infamy is always to be recalled, unless it be established that oblivion has taken place; thus Lessus l.c., and they add that it should proceed in this manner if there be no danger that by the retraction of the crime memory may be renewed; For Lugo D. 15 n. 35. Holzma de Hinc ajunt Cont. Tournely 1. 1 p. 380. Mazz. 1. 2 p. 456. c.

and Mol. and Dic. suffice for omitting the retraction, which probable oblivion is believed. Then he thinks [or considers]. 562v.

Second. It frequently happens in fact that faith is not given credit for these detractive actions; especially if the detractor speaks from anger or some other passion, and the accusation is either supported by testimonies of others or otherwise remains unconfirmed. To be warned: according to Lugo, d. n. 35, that a retraction per se brings infamy upon the one who retracts; hence, when there is doubt concerning oblivion of the infamy, it does not seem that one should be held liable for certain damage sustained in order to repair an uncertain harm to another. And although the injury inflicted is certain, and hence prevails, nevertheless, because restitution is not due solely on account of the injury but on account of a truly incurred damage, as we said with St. Thomas in n. 562, it does not seem that there is an obligation to restore a doubtful damage when a certain damage has been restored, unless in some case the danger of another's infamy were more estimated than certain infamy or the damage of the detractor. ». If he to whom you have taken away something shall likewise take it away from you; and let him not wish to restore it; for then you can lawfully use either compensation or retention, provided that the infamy incurred does not extend to others.

». Ita probabiliter. Sylv. 5 R. 3o. Mol. contrà » Lugo, et Quæreitur igitur I.

Is it licit to compensate fame with fame? It is certain that if another wishes to restore to you his reputation which has been taken away from him, you would likewise restore his reputation to him. It is certain that, if another has already taken away your reputation, you will not thereafter be able to take away his reputation in compensation; because then this would not be compensation, but vengeance, since your reputation would not be restored through the infamy of the other. Thus commonly the Doctors with . i 3 c. 4 n. 143. But the question arises: whether, if another is unwilling to restore your reputation, you can nevertheless effect compensation by deferring his own restoration of reputation?

The first opinion denies this, which Lugo holds in D. i5 n. 45. The reason is that compensation is conceded solely to repair damage incurred: but in our case, by not restoring his fame to him, you no longer recover your own fame from him that was taken away; and thus no compensation is given, since it does not repair the incurred damage. The second opinion is more common (indeed, most common, as Lessius himself admits above, in Book 2, Chapter iiin., Section i33. Page 2, Chapter 7, Note 4). Continuator Tournely t. i p. 38 i. Mol. D. 49.

Sylvius 2. 2 q. 62 art. 2. . 8 4 de Just. ar. 3 ad 4 et . c. n. i 43 cum Sa, Ratio, quia hoc casu non fit compensatio in reparatione proprii damni, cum utriusque partis damnum permaneat; sed fit in retentione debiti, eo quod possis tu retinere famam alterius, donec ille famam tibi restituat: Ait enim. Therefore, even though this compensation in any way spoken does not take away the damage taken from you, it nevertheless takes it away. 280 L. III. Treatise. VI.

If he has suspended the obligation of restoring another's reputation until he himself restores his own reputation to you. Nor does it hinder to say with Lugo that, if you can restore another's reputation at their damage, you can also take away their reputation, which no one certainly admits. Nam respondemus, aliud esse damnum inferre, aliud illud permittere; aliud enim est positivè auferre famam proximi, aliud omittere famam ei restituere, et negativè se habere; quia pro his duobus diversis actibus diversa occurrit ratio: tollere famam alterius, qui te infamavit, utique tibi non licet, quia infamia illius non reparat damnum infamiae tuæ; omittere autem famam alteri restituere, licitum est, si justam causam habeas id omittendi; justa causa est hic, ut diximus, quia non tenèris reddere jus alteri debitum, donec ille jus debitum tibi reddat. Furthermore, the ablation of fame, considered positively and principally, tends to the harm of the neighbor; and hence it is intrinsically evil; even though you might do this so that another may thereby be moved to restore your reputation, this nevertheless cannot render licit your detractive act, since such a means is not per se suitable for repairing your own reputation. Not thus in the omission of restitution, because this omission does not tend of itself to the infliction of harm upon another, but only to preserving thee indemnified, so that thou art not bound to restore a reputation to another who refused to restore thy reputation. 1000 Question is raised.

II. Non tamen hoc excusat omissionem restitutionis, quia haec omissio non tendit ad malum proximi inferendum, sed tantum ad servandum te indemne, ne obligeris famam restituere alteri qui famam tuam renuit restituere. If, when restitution of fame becomes impossible, is the defamer bound to compensate for the infamy with money? The first probable opinion affirms this, because since reputation is estimable in price, it should be compensated with money if otherwise it cannot be recompensed. Thus the syllogism. Tap. de 141 Ei videtur clare hanc tenere S. 2 ad 2 ubi dicit: Vel si non possit famam restituere, debet ei aliter recompensare, sicut et in aliis dictum est, scilicet pecunia, ut in solutione ad 1. jam dixerat.

Secondo tamen probabilior sententia negat, quia justitia tantùm obligat ad

reddendum ablatum vel aequivalens, sed pecunia non est id, quod per detractionem ablatum est, nec equivalens famae ablatae, cum fama sit ordinis super- rioris ad pecunias, et ideo quibuscumque pecuniis numquam satisfieri potest. It is commonly taught by the Doctors that, if the calumniator be rich and the calumniated poor, then, if he cannot restore his good name, it would be fitting for him to compensate the injury to his reputation with some money, provided that the other one willingly accepts it. See what is said in no. 627. Question. III.

An infamated person, if another has not wished or been able to detract from his reputation, can that be compensated with money? Others deny; others affirm; as in 2 c. 11 n. 136. Mol Bon. . Arag. hold this to be probable, saying in c. 4 n. 149, that since the Doctors teach that a debt cannot be compensated probabiliter when it is dubiously uncertain, they understand this to mean the case in which the debt itself is dubious; not however when the debt is certain and only the manner of satisfaction is under dispute; for then you can lawfully use a probable opinion, satisfying yourself with compensation or otherwise. Thus Salamanca, l. cited. But see what is said in book 1, n. 35 and v.

However, where we have adhered to contrary opinions. If you cannot without danger to life (Unless another is involved in the same danger to life, according to no. 138. Nevertheless Croix holds n. 1251 with Illustrious: fear of a grave temporal damage to goods, even excusing itself from the restoration of reputation; This can be admitted only if the damage to goods is respectively greater than the damage to reputation; Or if the reputation to be restored has less value than the reputation detracted. Thus it is said. A prelate is not bound to restore a thing to a lowly man; if otherwise it cannot be, namely through the loss of his own reputation which has much greater weight; but then it suffices if he praises the one who has been defamed or compensates him with money.

V. Card. Lugo l.c. * (Ità etiàm 2 » c. 11 n. 138 et 282 L. III. Tract.

VI. From "Dictionary," in opposition to some: Otherwise equality would not be maintained. * 7. If the infamous person has spontaneously forgiven (provided, however, that his infamy did not extend to others, whether by expressed or tacit condolences), even though one would still owe it as a matter of charity to compensate for some damage at some point if you can do so without great difficulty. Cardinal, Lugo, de sectione 3, numero 28. But sometimes even a presumed or interpretative will to condone on the part of him who is able to forgive, if that affection were so remarkable that he would readily forgive if asked: then he is not unwilling, at least as regards the substance, although the reputation may not be restored.

Card, Lugo d. 15 s. 3 n. 28. C. Lugo l. c. Quæritur, an restitutio famæ licetè condonetur? » Resp. It is licit in those cases in which one may lawfully bring oneself into disrepute; but in those same cases and with how grave a sin one commits by forgiving oneself when bringing disrepute upon oneself, in the same way gravely does one sin by forgiving oneself. l. 7 c. 10 d. 38 * (Speaking per se, it is not mortally sinful to bring oneself into disrepute; excepting those cases mentioned above. But as to the infamy; hence also commonly, whoever is the lord of his own fame.

It is nevertheless venial, if it is a cause). 1. Forgiving the restoration of reputation is a mortal sin, 1. If infamy rebounds upon others. 2. If consequently follows scandalum. 3. If there is a man very useful to the State.

and may the fruit of infamy be impeded. 4. If fame is deemed necessary for the management of an office, Sot. l.c., who nevertheless note that a remission is always valid when fame does not extend to others, but if it does extend to others. Wherefore parents cannot condone when it regards their children, nor children when it regards their parents. V. Unde non possunt condonare parentes, quando redundat in filios, neque filii quando redundat in parentes. Author cited.

2. From this truly precisely, what is seen as remitting an injury by one who, being infamous or affected with contempt, converses with the infamer, is not considered to be forgiving the restoration of fame or honor, nor any other debt through familiarity. 19. * ## CHAPTER II. ## Concerning the Ninth and Tenth Commandments? « Resp. All prohibit internal concupiscences and voluntary delectations of those works which are forbidden by the precepts of the second table, especially the sixth and seventh. Concerning this matter see above: and it will be evident from what is said about sins below in this book. V.

HEAD III. ## What about the Precepts of the Church? « Response. Even though they are many in number, nevertheless primarily five are counted as common to the entire Christian people. From which it remains to treat of the third, because concerning the first. » and the second act is in Preface 3 Decal. From 4 and 5 below in the book.

VI. Of Sacraments: Now it is proposed that against this precept sinning through mere contempt alone be prohibited. Question I. What is required for fasting according to Ecclesiastical law, and what is its obligation? 1004 Concerning single sustenance. 1005 Concerning abstinence from flesh,

sheep, and dairy products. 1006 Whether abstinence from dairy products during Lent is obligatory under a grave precept? 1007 Doubt. I. Does this abstinence also oblige even on Sundays in Lent? 1008. By what excuse are meats and dairy products eaten during Lent excused? 1009 Dub. II.

During the fast outside of Lent is it forbidden by common law to abstain from dairy products? Dub. III. When, where the custom of abstaining prevails? Doubt.

IV. Is it licit to eat baked and cooked lambs? 1010 Dub. V. May it be permitted for him to eat well-done eggs, when eggs are allowed to him? III.

Treatise. VI. From 1011 Dub. VI. Whose meats are forbidden in fastings? 1012 Dub.

VII. To which children may meats be administered? Whether those dispensed to eat meats are bound to do so at only one meal, and to abstain from fish? At a private table? Sacred things concerning this matter according to N. SS. P. Ben. XIV. I.

Of obligation under grave constraint. II. Concerning foods to be used in the chapel. III. Concerning the hour of dinner.

IV. Regarding feasts forbidden for eating flesh, permission has been granted to eat meat. V. Regarding the Lenten restrictions on eating meat lifted for feast days. VI.

Concerning the Bull of the Crucified. VII. Concerning fastings outside Lent. What if someone is dispensed to eat flesh meats on account of weakness of powers? Are those who are dispensed to eat meats permitted only meats that are wholesome? Concerning the debt of proper nourishment.

Does an antevertens notably offend against the hour of midday? He gravely sins who permits such a thing. 1017 De divisione prandii etc. apud Bus. 1018 Qu. I. May a little food or drink be taken during fasts? II. Do confections break the fast? 1020 Qu.

III. By how much time is the meal such that it does not interrupt the fast? Yes. IV. Who can return to that after having risen from the table?

Which one? V. How long is it permissible to delay the meal? May milk, wine, and similar beverages be taken? I. May it be permitted to drink

wine?

What. II. Is a drink named Sorbetto said to be made from the juice of a stag and lemon? 1023 Qu. III. Is it permissible to consume chocolate drink? Concerning the evening collation.

What quantity is permitted in the collation; and what in the Vigil of the Nativity of the Lord, and of Easter, or Pentecost? What quality of foods is permitted in the collation? Dub. I. Is it permitted to take eggs? And is it permissible to take a little cheese? 1028 Dub. II.

Is a fish? 1029. Doubt. III. All bread cooked and small drink from herbs? Are pulses? What is the small quantity of flesh or other foods?

And whether it is forbidden to eat a small quantity frequently in a day? 1031 Qu. I. Whether he who eats twice a day culpably is bound to fast? What? II. What, if innocently?

What. III. May it be permitted to taverns to serve meat on days of fasting? 1. Is it permissible for innkeepers to serve meat on days of fasting? It is only a unique food of the day in order to nutrition.

Which is such a necessary condition that for the second: you will eat mortal sin; but with the rest beyond the second, only venially up to the highest extent, » 2. It is abstinence from flesh meat, also from eggs and milk products, because they derive their origin from flesh and are very nourishing. Wherein within the Quadragesima season are things generally prohibited; outside of it they are permitted. But within those places where custom permits, which everywhere ought to be noted, Bon. d. ult. q. 1 p. 2. ex Sylv. . Az.

Laic. l. c. » Fil. 1 c. 2. Add: dispensed as regards flesh, it is also permissible to eat dairy products and meat; but not vice versa: and he for whom flesh-eating is permitted, a second repast seems likewise permitted, contrary to Regin. 7 c. 10 q. 3. Benedictus Pontifex XIV. See below n. 1013)* » Confirmed by Bon. I: c. that the consumption of flesh may be permitted on account of the weakness of nature, and not because of necessity or damage only.

See because concerning the essence of fasting is abstinence from flesh. » Question Nonewhether abstention from sheep and dairy products is obligated on days of fasting according to grave precept? Indeed it was condemned by Alexander VII. Propos. 32. which said: It is not evident that

there is a custom obliging to abstain from eggs and dairy products during Lent. Whereby it is certain that the aforementioned abstinence during Lent should be imposed, and indeed under a grave penalty, as commonly stated by the Doctors at chapter 2 of book 23 of the Third Part of the Decretals, section c., n. 34.

But there is doubt whether abstinence from dairy products obliges even on Sundays of Lent? They deny the obligation during Lent. Fag. Mendon, Mach. loc. cit., n. 35. The reason for these is because in c. Denique, Dist. 4, lacticinia are prohibited only on days of fasting, as the Glossa explains; However, days of the Lord's Day in Lent are not.

III. Treatise. VI. There are days of fasting; therefore, it is not necessary to abstain from dairy products on them. Neither is it certain, as they say, that a practice contrary to the custom of the faithful was introduced whereby their consciences were bound under grave sin.

Although the aforementioned sentiment is not precisely comprehended under the referred propositions, it is nonetheless entirely opposed and must be defended with. Propos 32 n. 9. lib. 5 c. 1 D. 19 n. 3o cum Cajet. d. c. n. 35. Reason, because throughout it is strictly commanded during the days of Lent to abstain from dairy products. It is certain that the day of the Lord is also a day of the Quadragesima: Wherefore the first opinion does not seem very probable, since many consider it improbable according to Sanchez, d. n. 3. It is to be noted, i. c. n. 4. and c. 40., that the poor, who do not have or are unable to find anything else for their sustenance besides lacticines, lawfully may eat them during Lent and provide them for their domestic servants and workers.

The same is said. And the same is asserted by 6 and Salmanticenses, ibidem, concerning the agents on a journey, if they do not find fish to buy on the way. They nevertheless more probingly contradict this and Leand. and Steph. according to Croix, lib. 3 part. 2 n. 1323: if this were to happen merely through one day; unless, they say, there be a person who otherwise could not conveniently be remedied. Note 2. when c. 1 num. 4 v. You might say, Croix, n. 1323, with c. 2 n. 19 and Vega, and Angles, that in prolonged fasting over several days, where other food than bread cannot be had, it would be permissible to eat not only dairy products, but also meats; but this seems to me excessively rigid, if the deficiency were for a notable period of time, such as a week: whence rather in such necessity I consider the opinion of Layman, trans. 8 c. 1 n. 5, more probable.

Holzrn. d. n. 4 et . 2 pag. 156 Cap. III. Dub. I. Of Doubtful Precepts. V.

It must be noted that 3. many doctors have held that, whoever during Lent for several days abstains from fish, may then lawfully consume dairy products at that time. More probab ly says . Dub. And even these foods would lack for sufficiency. Now, since such slender foods do but little to sustain, they are by no means bound to one meal, as they say with probability. c. 4 c. 1 D. 15 num. 4. when it is asked concerning Angles and others; and the same is rightly taught. n. 1 when common: if anyone should not have a sufficient breakfast to sustain him for the whole day; or if he has been fasting since the previous evening, etc. Doubt II.

Are we bound by grave abstention from dairy products according to common law during days of fasting outside the Quadragesima excepting simar? It is certain that we are bound to abstain during Lent, as stated in the prescribed regulations, as mentioned above. It is doubtful whether we are bound to fast outside the season of Lent. The first opinion affirms that, and maintains it, Cov. 4. Gomez in Bulla, Claus. 7 num. 3.

That they prove from chapter Denique 6. In Distinction 4, where Gregory the Great wrote to Bishop Augustin of the Angles thus: But it is fitting that we fast on those days when we abstain from flesh and all things which derive their origin from the substance of flesh, namely, from milk, cheese, and lamb. Where it should be noted that the words "par est" do not here signify counsel, but a precept, as explained by the Glossa, and are commonly held to do so. DD. with Diana part. 3 tr. 6 R. 8o, and . tom. 2 pag. 155 num. 428. It is confirmed from chapter Rogations 3, distinction 3 where it is found in the concordance.

It was said at Aurelianensis, that during the days of Rogation (in which formerly fasting was observed), faithfuls should use foods of Lenten observance: therefore in the Quadragesima 288 L. III. Treatise. VI. Of forbidden dairy products, fasting is also forbidden on other days.

This judgment seems to be held also: In question 147, article 8, chapter where speaking generally about fasts, he says thus: The Church has forbidden those foods to persons fasting which... lead a man to venery. Such are the meats of animals that repose and wander on earth, and what proceeds from them, just as lacticinia proceed from things capable of walking, and eggs from birds.... And hence the Church has especially prescribed abstinence from these kinds of food during fasting days. Therefore, the Holy Doctor seems to hold that in all fasts, where alone custom prevails, it derogates from the obligation of abstaining from dairy products. The second however is the common sentiment, which we follow

and hold: in the fourth treatise, eighth chapter, first note, third section, book one, first chapter, doubt twenty, number two, with St. Anthony, D. ult., question one, part two, number two, 23rd chapter, number thirty-three, with Sporerde, 32. Alexander VII, n. 10, cap. i, num. 3, 155 n. 428 teach concerning common law that dairy products and eggs are not forbidden; reason being, because the contrary is not legally proven outside of Lent: for in said chapter it was treating solely of Lenten fast, about which it was inquiring, as is evident from the Gloss and the very context of the Canon, where it states, "At Easter they propose to begin fasting," and finally, this sacred season, etc. And thus they understand that the prohibition does not hinder those cited canons on Rogation days, because such a statute was established for that particular Aurelian Church.

Nec obstat Decretum Ih. in lib. cap., nam ibi ad III clarè docet, abstinentiam à lacticiniiis extra Quadragesimam non præcipi, et ideò non pertinere ad essentiam jejunii, dum ait: Et ideò in quolibet jejunio interdictur eius carnium; in jejunio autem quadragesimali interdicuntur universaliter etiam ova, et lacticinia. Note that as well; therefore in fasting outside Lenten time, milk products are not forbidden. Why, however, are they forbidden during Lent, the Sacred Doctor assigns several reasons, namely because such fasting is Chapter III. Doubt. I.

Of the Precepts of the Church. 289 It is more solemn, firstly because it is observed for the imitation of Christ the Lord; secondly because through it we are disposed to the devout celebration of the mysteries of our Redemption. Hence 32, num. 8 supposes as certain that one who is dispensed from lacteal foods is bound to fast, although he is not released from fasting on account of such a dispensation. Doubt is present. An ubi viget consuetudo abstinendi a lacticiinis in jejuniis extra Quadragesimam, talis consuetudo obliget sub gravi? The first opinion denies it; this is held by Sanchez, Cons. 1, 5 c. 1 dub. 21 n. 2 with others, 23 diff. 9 n. 1, and he considers it probable in 4 c. 5 § 1 n. 22 with Portell.

Salas, nam alioqui est servatum esse ex ignorantia vel ex devotione sine obligatione. Reason, because to be bound by custom oneself, it is not sufficient to believe that there exists an obligation; rather, it is required that it be certain that a greater part of the people had the mind gravely to bind themselves, as they say in tract 11, chapter 5, note 28. For no law obligates unless it be proven as certain, and nobody is presumed to have imposed upon himself a certain burden in doubt. Nevertheless, the common second opinion, which we embrace, is taught by St. Thomas 2a-2ae, 147.18 ad 3; 1.7 q. 1.5 q. 2 n. 3 et 10; cit. n. 3; prop. 32 n. 10; 2 q. 3 in fin. Conc. 1. 5 pag. 188 n. 5. num. 2 cum Ratio, quia in hoc casu possessio non stat pro libertate, sed pro obligatione consuetudinis; Regula

enim generalis est, ut pluries diximus, quod pro eo stet possessio, pro quo stat praebgo L. III.

Treatise. VI. On the matter of sumptuary laws: one such law is based on conjectures that suppose a custom has been introduced to bind itself voluntarily; this occurs when, consistently and with significant inconvenience, it is observed by the majority of the people, as they say in book 7, chapter 15, note 17. 3 D. 3 p. 2 § 3 n. 13. Diana page 3, translation 6, rule 8o., as we have said regarding IV. It is required when; because the people do not usually constantly agree to the observance of any custom gravely inconvenient, unless they truly feel themselves bound.

If therefore the presumption is established as a custom that the people have introduced with the intention of obligating themselves, possession is also thereby established for that reason. Doubt IV. Is it permissible to eat baked and broken cookies in any quantity during the Lenten fast? Pasqualigus affirms decis. 85 n. 3., namely that the quantity of farinaceous eggs is so absorbed in such a composition, that no manner of speaking it can be reckoned as food from an egg. But most certainly negated with Pakw tract. 3, dec. 3, p. 2, n. 6, s. 23, c. 2, n. 41. Reason, because the substance of the eggs is not lost by this mixture with flour, otherwise anyone could on prohibited days eat flesh mixed with flour, commonly known as "bianco" or white meat, prepared from flesh and flour.

They nevertheless say that commonly the priests admit this, being able to eat even two baked goods without injury to the fast. They cite R. 31. 27, de diff. 5. 23, and diff. 7 n. 3. But Diana allowed it only on account of custom; whereas Ledesma and . Here it seems more probable to me to say that such a meal does not excuse from a venial sin, unless some reason at least intervenes. The fifth rubric is discussed. Whether it is permissible for one who may lawfully eat dairy products to also lawfully eat roasted things and condiments?

They affirm Hostiensis. Abbas, Sylwius, Distinctionem 82, apud Cumerium. Reason, because they say that lard and seasoning truly are not meats; yet as fatness increases, even after the meal is finished, Chapter III. Dub. I. Ratio, quia dicunt laridum, et sagimen revera non esse carnes; cum pinguedo crescat, etiam finito nalu Cap. III. Dub.

Of Ecclesiastical Precepts. 29. On the augmentation of animals; hence they think that fatness should rather be called the excrement of flesh, as is milk, than true flesh; 10 art. 1 n. 2 considers this probable with Laym and Az., whom he cites; But Az. i. 1. 7 c. 10 qu. all mini- mely does not assert this

to be probable, only does not disapprove it; He explicitly says that the aforementioned opinion is not practically probable on account of the contrary custom; Although he grants that it might serve to permit milk products to the poor. 2. That it may be used as food for a dog, and yet not easily condemned as a grave sin. That slaves may be permitted to cook that which is commanded for them by their masters, and even to eat it, if they are unable to resist this command. Tambem, autem, Decretum lib. 4 cap. 5 sectio 1 ex nota 14 distinguunt et dicunt: lardum vel pinguedinem nondum liquefactam igne, omnino censendam esse carnem; si vero illa sit liquefacta et in sagimen reducta, dicit, probabile esse cum his omnibus non obstantibus (quidquid est de pauperibus et ancillis ut supra dixit Laym). Omnino videtur non recedendum a sententia communis quam docent 5 cap. 1 Decretum in fine et Decretum lib. 4 cap. 11 nota 48. Bon D. 4 q. 2 p. 6 n. 23. . 2 p. 156 n. 430. . 266. . cap. 2 n. 15 cum. hanc servandam esse dicit in fine.

Doubt is raised VI. Of whose animals' flesh shall be judged and deemed forbidden on fast days? S. Th. 2 2 qu. 147. ar. 8 ait, interdici carnes omnium animalium, in terra quiescentium et respirantium. But in order to discern which animals are to be reckoned as flesh, although it is no light matter to attend to whether they usually live long out of water, more attention should be given to the common estimation of the faithful and the judgment of physicians, if they are commonly reputed so. III.

Treatise. VI. Of fleshly lusts, or fish; thus. 4 c. 2 num. 8. Concina tom. 5 pag. 156 num. 2. . 2 pag. 155 n. 427. Ecclesiastical.

D. ult. q. 1 p. 2 num. 1 cum Silvestre. Newarr. Fill. et Reg. Hence they say in the 4th chapter, 5th section, 1st number, 10 canons thereof, likewise in the Regius and Gabinian laws among the Crosses, book 6, part 2, number 1266, that limacine, testudinal, ranae, locustine, and conchine meats are not forbidden. Reason, because such animals are at least equated with fish, since they have almost no blood, or cold blood, or are nourished by fish, or live in water like fish.

They also say in Milante on page 265 and chapter 12 regarding vipers, which are similar to eels. They also say the same regarding otters, beavers, minks, and certain species of weasels. Birds, however, although some may be nourished in water, are considered true flesh, as are lice, crows, marine ravens, and similar [creatures]. 1012 Doubt VII. To which boys is it licit to administer meats? Certain is and common to be able to give children who lack the use of reason before the seventh year, as well as infants; 1 cap. 12 n. 6 et 16. . 23 c. 2 n. 20 cum etc. The same is said of children who have not yet reached the use of reason after the seventh year, as Croix l. 3 p. 2

n. 1367 cum communis.

On the contrary, they cannot be given meat to children who have immediately upon completion of the seventh year acquired the use of reason, and this must be held firmly. See what is said in book 1, note 155 at the end, v. Question is posed. A doubt arises: whether children who have already attained the use of reason before their seventh year can receive fleshly food. Sanchius and Diana affirm in n. 676 and others in a similar case cited as n. 270, whose opinion does not seem improbable according to the doctrine of St. Thomas, because, as they say, positive law only regards common contingent circumstances.

But more commonly and reasonably they deny it. c. n. 6. 7 c. 17 alias 28 qu. 2 in fine, et n. 20 cum Cap. III. Dub. I. Of the Commandments of the Church. 295 . In dubio autem, an aliquis puer pervenerit vel non ad usum rationis possunt neque eicarnes ministrari?

Distinguendum: et si puer attigerit septennium, non possunt, quia tunc praesumptio stat pro usu rationis, et consequenter pro obligatione, ut recte dicunt. c. cum AA. citatis. Otherwise it must be said if he has not reached the age of seven years, because then the presumption stands otherwise, and consequently possession stands for liberty, as Quòad eos autem, qui diebus jejunii dispensan-1013 tur ad carnes, attentè oportet hîc advertere, quæ nuper sancita sunt à SS. Our Blessed Pontiff. XIV. In the Encyclical Letter which begins: "We do not avoid." In the Prolegomena of the Dissertation P. II. at length you will find it: where the Saints.

The Pontiff, grievously sorrowing over the pernicious license of many, complains so much that it has come to pass that no reason for fasting exists at public times during which banquets and feasts, forbidden by Apostolic institution, are carried out impudently and publicly, and interdicted things are indiscriminately introduced. Hence in the aforementioned Epistle, and more clearly in another which begins: In suprema (and there you will find this), thus the Pontiff decreed: We have determined that for any reason whatsoever, whether individually or indiscriminately as a multitude, on account of legitimate causes, and according to either one of two medical counsels (provided no certain and perilous condition of health intervenes, nor necessity otherwise demands it), during Lent and the other times of the year when the eating of flesh, eggs, and dairy products is prohibited, there should be absolutely no dispensation for anyone at all, excepting nobody, to observe but one kind of abstinence, and not to offer either licit or illicit feasts, according to the tenor of these presents we declare and ordain. This was doubted by some, whether the dispensation 102 concerning flesh allows one to have even a

fish, or according to §94 L. III. Treatise.

VI. Regarding a lawful fast, not at feasts, nor with scandal, but sometimes moderately to eat at private tables? As to this doubt, certain modern authors (in Petio in Additamentis ad nostri Pontificis, which are appended at the beginning of the first Bull as mentioned above; That feasts and banquets not according to Apostolic institution and most sacred precept may not openly and without penalty be held during the season of fasting, and that interdicted convivial feasts and banquets may not be promiscuously introduced. Thus he responds: Therefore, in banquets and at tables where meats and lawful foods are promiscuously eaten, it is prohibited to eat. Si privatae sint mensae et nullum sit scandalum, dispensatos ad carnes legalesque cibos cum illis edere debita moderatione fiat; non ad satietatem, non immodice, non ad gulae delectationem, sed ad stomachi appetitivam; minimè censetur hac Bulla prohibitum.

Could it not be an act of temperance that, if anyone should not eat two portions of meat, he might eat one portion of meat and another lawful food? Neither indeed those SS. The pontifical desire to be, what is to be avoided, is approved by the sense of the theologians, but those which merely smell of the laxity of abuse. Nevertheless, these do not obstruct, provided one attends to two Bulls of Our SS. We do not doubt the Bull of Pope Benedict XIV, Non Ambigimus, and the Bull Libentissimdam, which expresses the aforementioned opinion does not seem probable; because although in the first Bull it is incidentally mentioned regarding convivial feasts, this prohibition was not instituted solely for convivial feasts: for primarily the Bull generally prohibits the consumption of fish by those dispensed; secondly, the Pontiff asserts that this Bull issued as an equivalent to another of his Rescripts published that same year, through which he had generally dispensed from abstinence on meats, explicitly forbade indiscriminate licit and interdicted banquets: Who then will say that the Pontiff prohibited only the consumption of dispensed fish in convivial feasts? Then through the aforementioned Bull Libentissimd and through the inserted Constitution therein, it seems that the doubt has been entirely removed regarding the fraternity: for in that place the Pontiff commands the physicians not to give permission to eat flesh at their desired time unless two conditions are added, namely once only on the day of the feast, and not to mix feasts.

Therefore, fish were generally forbidden to those dispensed for meat, both at feasts and at private meals, since the licenses of the physicians do not permit the eating of meats only at feasts, but also at private meals. Finally, in the aforementioned Constitution, Si Fraternitas, for the Inquiry 4 alone is granted permission to use fish for eggs, and permission to use meat is

denied; nor does the Pope make any mention thereof concerning convivial feasts, but speaks generally. Moreover, the aforementioned Author, in the aforementioned text and in the subsequent Letter of ours, notes Petio l. cit. Pontificis Benedict. XIV. non reprobari opinionem, quod extra Quadragesimam non sit obligatio de jure communi, diebus jejunii abstinenti a lacticinii, juxta n. 1009.

And indeed with very great probability; for although in the aforementioned Epistle In Suprema, as stated above, it is said: "In Lent and other times of the year when the eating of flesh, eggs, and dairy products has been prohibited, dispensation may have occurred," yet through these assertive words no particular sanction appears to have been issued by the Pontiff; and that prohibition of dairy products is reasonably understood as applicable only to the times of Lent in which their consumption was certainly abominated. Furthermore, another letter edited on June 10, 1745, which begins at number 105, Libentissime. (See the Letter in the same Dissertation. Proleg. P. II.) our most holy. The Pontiff declared I. that the two aforementioned precepts for dispensed meats, namely concerning the consumption of meat on only one day per week, and concerning the non-mixing of foods, obligate under a grave penalty.

II, quod dispensati ad carnes in vespertina refectiuncula uti debeant eo cibo et eaque portione, quibus jejunantes utuntur, recte meticulosa conscientia. III, quod idem dispensati servare debeant horam jejunantium praescriptam. IV quod pro dispensatis ad carnes edere licitum sit ipsas carnes, interdicti vero sint pisces, adeo ut utrumque simul adhibere non possint. Translation:

IV that for those dispensed to flesh it is permitted to eat the very flesh itself, but fish are forbidden, so that neither of these two can be used together simultaneously. V. quod praeceptum de dictis epulis non miscendis complectitur etiam dies Domini cos Quadragesimales. VI. quod lex non 296 L. III. Treatise.

VI. Let Him turn His gaze toward those who rejoice in the Crucified Bull. VII. quod praedicta duo praecepta urgeant diebus jejunii, etiam extra Quadragesimam. Here however it is to be noted that those who are dispensed from meat are not forbidden minimally to make a second meal, if they are dispensed on account of weakness of powers; as 26 with Wigand: And this is also declared in the letter of our Supreme Pontiff by the words mentioned above: Namely, except when there is any certain and perilous reason for health. Angeus Franzoja writes in book 3, treatise 6, chapter 3. Animad.

II. v. Here at this point etc., if dispensed to meats, he may lawfully eat and be nourished with common porridge, meat-cooked in accordance with the right of meats, not only with dairy products and lambs, but also with fish. Reason, as I think, is that the prohibition of the Pontiff for mixing meats and fishes should be strictly understood, namely when a proper dish of meats is eaten; but the right of meats has more to do with seasoning than with the act of eating. This question is raised: whether those dispensed to meats may eat unwholesome meats, namely pork and similar kinds, without injury to their fast? They commonly affirm and indeed probably, firstly because permission for meats generally granted is not to be restricted solely to the salubrious ones, and secondly because others who have received different permissions would frequently be subject to scruples, often doubting what meats are harmful or beneficial.

Thus Lugo from Justice. D. 3 num. 139. Sanchez Decretum, book 4, chapter 1, number 59. Cross chapter 3 part 2 number 1313. 4 chapter 5 § 1 number 8 and . 23 from 3 21 with Villal. Concina t. 5 p. 273 num. 6 adducit edictum Clementis XI.

Published in Rome on the day 24 Sed; it should be noted that according to Concina, said Edict was not general for the whole Church, but only for the Roman state, and this was declared by N. SS. P. Benedicto XIV prius in libro Notificationum (tom. Chapter III. Dub. I.

Of the Precepts of the Church. 297, Notice 15, number 24), where it attests to this kind of Edict having been issued by Clement as Bishop of Rome. Then he explicitly declared this in his Bull on Lent: "We do not doubt that you will understand with such necessity and that a single abstinence must be observed, as we have expressly prescribed at Rome, and as we ourselves this year, dispensing for urgent causes, have strictly commanded." Note as in other cases at Rome, therefore our Pope Benedict clearly expresses this Decree, by which was simultaneously prescribed that dispensation for unique consumption and the eating of only salubrious meats be particular to Rome alone. Our Pontiff indeed extended such a Decree for the whole Church concerning the part of the single abstinence, but not regarding the prohibition of insalubrious meats. However, it is to be noted that in the Bull Libentissime, of the same Benedict XIV (See Dissert.

Prelong. P. II. Epistle. Third verse. Innocentius III. let it be said, that when some most urgent necessity for dispensation to eat flesh with a certain whole City or People intervenes, then only from the Apostolic See, yet still salutary; such faculty should be conceded.

This indeed was just to dispose thus and proceed more strictly when dealing with the universal People. That which is sanctioned to be disposed of in the aforementioned Bull for the universal People is not considered sanctioned as regards the dispensation for individual persons. But speaking in particular about pork meat, it does not seem that it can absolutely be called unwholesome, since itself, as the renowned physician Hoffman writes, has great compatibility with human blood. Riverius (2 cap. 17) hoc sentit de carne suilla quod Galenus senserit, et ait: Galeanus humanæ carnis similem esse asseruit; et si bene coquatur, omnium ciborum potissimum nutrire. It has a thick and slow juice, and therefore it provides strong nutrition.

III. Treatise. VI. Of that which cannot easily be dispersed. Someone might say: but why was pork forbidden to the Hebrews unless it was because it is harmful?

It will be replied that Palestine (that region so desolate) was prohibited from that [meat], because leprosy afflicts them there more than elsewhere, as Calmet writes in Leviticus 11:8; just as porcine flesh was also forbidden there, which certainly is not considered harmful among us. Moreover, St. Thomas says that other meats were forbidden to the Jews on account of excessive humidity or dryness, and others because they were considered unclean, such as pork; and the reason Moses gave for this prohibition was indeed due to the fact that swine's flesh is unclean: Of these you shall not eat... because they are unclean to you. Leviticus 11:8. But unclean are called those (as Plutarch writes) which no animal so much delights in a feast and in sordid places. Moreover, Natalis Alexander says the same thing, and Tertullian wrote similarly (in book 2 against Marcion chapter 18) that swine meat was forbidden to the Hebrews so that their gizzards might be restrained, and licentiousness might be curbed.

They are called unclean because (as Plutarch writes) no animal so delights in feasts as to prefer filthy places. The condition is a certain hour of repast; which is about midday, unless some other custom of the place prescribe otherwise. » This is not to be mathematically computed, but according to custom. But to anticipate the stated hour of repose notably without just cause is considered mortal; yet it is more probable that it be venial. Num. 13. See.

» notabiliter: et sine causa: quia prævenire ex justa causa; v.g., si iter faciendum, si hospites dimittendi, etc.; et absque ea per medium horam tantùm, nullum peccatum videtur esse. Delay until evening is both licit

and commendable, if you do nothing before from just cause, for example, if there is a journey to be made or guests to dismiss, etc., and apart from these, only up to midday, no sin seems to be committed. Delay until evening, and it is both licit and commendable, if you take nothing beforehand for a just cause, e.g., if there is an itinerary to be made or guests to be dismissed, etc., and without such, merely until midday, no sin seems to be present. It is asked, whether one grievously sins by anticipating notably without cause the meridian hour? At first it was held that the hour of repose was in the evening after the setting of the sun. Then it was referred back to the ninth hour, namely to the hour midway between noon and sunset.

Verily from the fourteenth century it was accustomed for the meal to be taken at the hour of the sixth, or rather at midday. This hour, however, is not to be reckoned mathematically, but morally, as taught by D. 7 ad 2, where it is said: For fasting requires a determined hour, not according to subtle examination, but according to gross estimation; for it suffices that this occurs about the ninth hour: for this was then the hour of repast. What, however, is to be noted as a notable anticipation? Others say that if the refectio is anticipated more than an hour; but others more probabily say that if it is anticipated even only an hour. . 1 lib. 7 cap. 11 quæst. 4. 277 n. 6. . 2 pag. 160. n. 444. Holz m. t. 1 page 333 number 6.

Although among many Religious, as he says, cit. Croix,... may the custom of anticipating lunch for the entire hour be received. However, it is permissible to anticipate that meal within an hour, even if for no reason. Nam tamen notable anticipatio sit peccatum mortalis. The first probable opinion affirms this with the Decretals, book 4, chapter 11, number 51, and tractate 23, chapter 1, number 86; and the Council considers this to be more probable, ibid., number 5.

Reason: Just as a precept is given concerning single companionship, so also is one given concerning the time of eating. The second however more common and probable opinion denies this, and holds it with Bus. 4 cap. 2 n. 15. 6 c. 2. Bonaventura, quæstio 1, partitas 4, numeralis 3, sectio 3, numeralis 3, tractatus 4, caput 8, numeralis 1, numeralis 11. praeceptum sectionis 5, numeralis 23. paginam 160, numeralis 443. pagina 1, numerus 433, numeralis 6. capitulum 2, numeralis 87 cum Innocenzio. Filli. et unde, sicut in Officio Divino, licet hora recitationis sit præcepta, anticipatio tamen non est mortalis; ita nec etiam in jejunio. Hence it cannot be said that, although the determination of hours may not pertain to the essence of fasting, it is nevertheless a condition prescribed by the Church; for it is replied that this condition either does not oblige under grave penalty, or if it obliges under grave penalty, at least it will not be

certain; and therefore it does not oblige mortally.

Neither 50o L. III. Treatise. VI. Regarding the office, which by anticipating would frustrate the end of fasting; because (as Eblel rightly responds) the abstinence, which was to be maintained, is compensated for later, although with less difficulty; but this diminution is not considered serious; therefore, the end of the precept does not fall under another precept.

But no one doubts that such a kind of anticipation is at least venial; from which any rational cause excuses it, namely the beginning of a journey, an urgent necessity, bodily weakness, urbanity, and similar things. Thus Eblel, Holzrn., Sporer ll. cc. et . etc. 1017 « 1. Jejunium non solvitur per divisionem prandii, sed ob negotium incidens, vel si quid sumatur per modum medicinae, vel ob debilitatem, aliamve causam rationabilem, ut apud Religiosos faciunt ministri et lectores mense, quia non nisi unicam refectionem intendunt. * (Ità Pal et Et ità præscripsit S. Benedictus in Reg. 28.)* Et hinc dub. 34. 6 c. 3 n. 29 excusat famulos mense ministrantes, si aliquid prægustent aut ex reliquiis gulosè sumant, tum ut meliùs serviant, tum ut famem sublevent; intellige, si cum illorum refectione licita moraliter uniatur. * (Ut ait etiam Eblel tom. 2 pag. 161 n. 448 cum . . 3 p. 2 n. 1280.)* Nec solvitur per sumptionem electuariorum, vel crebriorem haustum; (antè quem modicum sumere ne potus noceat, permittit Azorius, Escob. tom. 1 E. 7 cap. 3 num. 28); et quidem toties quoties biberit, dummodo non in fraudem jejunii, verbi gratia 5 vel 6 amygdalas, vel quid simile, 8. R. 24. quia ordinatur potius ad alterationem corporis, vel digestionem ciborum, quàm nutritionem. 1018 Quæritur l. an liceat sine fractione jejunii sumere toties quoties libuerit aliquid cibi ante potum ne potus noceat? Affirmant Pasqual.

Fat. Dian and Leander (according to) who citing D. Cap. III. Doubt. I. Of the Precepts of the Church. 501 Thom.

Sylv. n. 68. when Thomas and those cited by Leander permit this so rarely, almost never, but merely once or perhaps twice, in which they themselves also agree. 5 pag. 255 n. 3. Others, however, as Ebel tom. 2 pag. 165 n. 440., consider it very common, as he asserts, tr. 8 cap. r n. 7. Croix lib. 3 part. 2 n. 1293. id permitteunt, si non fiat frequenter. It is asked whether electuaries break the fast? Electuaria are called those things which are made from selected substances, such as sugar and juniper or cedar, commonly known as Conserve, according to Concina tom. 5 pag. 203 n. 8 and Ebel t. 2 p. 171 n. 447 cum. 3 p. 2 n. 1292.

Holzmann t. 1 pag. 337 n. 21. Mildate in Prop. Example 23 page 257 and

Ebel p. 156 n. 433 with the common commentary. Of the aforementioned Electuaries, thus teaches 2. qu. 147 art. 6 ad 3: Electuaries are not primarily taken for nutrition, but for the digestion of foods; whence they do not break a fast, any more than the assumption of other medicines does; unless perhaps someone takes electuaries in very large quantities as food in fraud. This doctrine is commonly followed by Holzmann. l.c. p. 338.

Reply to question 2. Ebel p. 161 n. 447. cap. 2 n. 42 cum Caj. n. 53 cum modo sumantur in parva quantitate: utuntur ratione D. Thomæ, scilicet quod electuaria non sumantur ad nutriendum, sed ad digestionem adjuvantam? sicut vinum, etiamsi vere nutriat et ad delectationem sumatur; tamen quia non est ad nutriendum institutum, non frangit jejunium. But the opposite must be held according to Concina p. 203 n. 8, who cites Leand. tr. 6. Response 95. Note 2. Reason, because consequently Electuaria are lawfully used in small quantities.

III. Treatise. VI. On the quantity, insofar as they are taken as a mean, there is a sufficient cause excusing from venial fault; but when they are taken for delight, there is lacking a cause, and therefore they cannot be committed without guilt. Nor does it hinder the reasoning of Doctor Thomas as opposed to what was said above; for, since he says that they cannot be taken as food, consequently he excludes that they can be taken for delectation.

Neither is equality of wine valid, for wine has of itself a reason to be a drink, and not food, as medicines have of themselves. Moreover, a reasonable cause suffices to excuse one, although it be not so grave, such as for the purpose of aiding digestion of foods, as says St. Thomas, or for comforting the stomach, for removing nausea of the mouth, for preserving the voice, and similar reasons; thus it is numbers 14 and Eblel l.c. In this way, those who take something that they may not lack strength when a meal should be deferred beyond the common hour are probatively excused, as teach 1 D. 3. § 2 n. 3 cum Azar . et Val. . 3. part. 2. n. 1282. 1020 Quæritur III. By how much time the meal should not be interrupted mortally, so that it may continue to be consumed continuously! 4 c. 5 n. 16 et Tract. g. R. 32 dicitur, si nulla adsit causa, non interrumpi prandium per quadrantem cum dimidio, etiamsi decereveris non amplius comedere; imò Elbel tom. 2. pag. 158. n. 438. concedit id etiam per semihoram. Without doubt the meal is interrupted at the hour, as in 16. c. 21 n. 38.

When however a business intervenes. Book 5. Chapter 1. D. 24 n. i. cum aliis, etc., 10. dicunt, nec etiam per horam prandium interrumpi. But John. Sanchez extends it even to two hours; and although this is not admitted by

Sabm. tr. 23. c. 2 n. 49., nevertheless they absolutely concede it in 4. cap. 5. § 2 n. 15. with 3. p. 2 n. 1279.; and indeed, as Imò Croix says in the aforementioned place with Leand, probably when someone has not sufficiently refreshed himself. Stephens and Pachomius still probabiliter concede that, however late it may be, he is able to return for dinner: Dumnodorus (adds) having retained the intention of returning, and not having sufficiently prepared himself.

But in the case where someone cannot endure fasting without great discomfort, I think that even without that intention, he can return to the meal, because the Church never intended to oblige one to pass the day without sufficient refection? And even the Salamanticensi seem to concede this, according to note 50 at the end with Les. . Question NoneIV. Si quis postquam surrexit à mensa animo non amplius comedendi, possit iterum ad comedendum redire? He denies. L. 4, cap. 2 D: 2., et: ut ait n. 16 cum Villal. quia adhuc moraliter censetur idem prandium durare. That however which they say, and; it is rightly denied, unless when through that single act of eating one cannot conveniently fast for the remainder of the day; for otherwise, since the essence has not yet been destroyed, fasting must certainly be observed.

It is questioned V. How long is it licit to prolong the meal? He probably responds: Chapter 4, Section 2, Note 15 and Croix, Book 3, Page 2, Note 1283 with; but rather 2 page 158, Note 437 with Go-bat allows up to three or four hours; at least for Germans, according to their custom; but Croix justly doubts whether this custom has been approved; unless, as he says, after about two hours only light fare is set out, or lighter foods; especially if the midday repast be omitted after vespers; and I neither approve nor disapprove of this. "Nevertheless, receive 1. If anyone were to take milk, wine, 1622 304 L. III.

Treatise. VI. Of "and similar things, whether they are sucked or eaten," do not have the nature of drink but of food, and primarily refer to nourishment*. It is common among those who; because they have the nature of food. Say. And others. 6. * (Even if only the juice is swallowed. And the same applies to grapes, according to common opinion (contrary to that which would take them in large quantities for fraud against fasting.

Whoever, however, should exceed greatly in drinking, contrary to temperance, yet not nevertheless against fasting would sin mortally, at least. c. n. 7. Here is asked this I, Whether wine can break the fast? It is not to be doubted that it breaks it, as many Fathers and St. Chrysostom bear witness. Saint Jerome, Saint Basil, etc., according to the first discipline of the Church, the ancient Christians entirely abstained from

wine in fastings. But neither is it to be doubted that in this present time the taking of wine is interdicted if it is consumed with food, or even outside [of a meal], for quenching thirst, or for aiding digestion, thus teaches S. Thomas 2-2 q. 47 a. 6 ad 2.

But the Church did not intend to interdict abstention (otherwise consumption, according to Billuart) from drink... although it may in some way nourish. And it is evident from c. Denique, dist. 3, where Gregory the Great says: Wine itself is permitted to be drunk in such a way that we entirely flee intoxication. Nevertheless, a doubt arises: whether wine taken for nourishment to appease hunger violates the precept of fasting? The first opinion affirms, which Sylvester and his followers hold, v. Abstinence No. 9.

Christmas. Alexander [of Hales]. Book 4, Article 7. Rule 14. Moreover, S. Augustine. Precepts, c. 2, n. 55. And this seems to hold, D. 1h. in IV.

The sentence. D. 15 quæst. 3 art. 4 quæst. 1. ad 1 his verbis: Qui potat extra horam unicae comestionis, non dicitur bis manducare, et propter hoc nec statutum, Cap. III. Doubt. I. Of Ecclesiastical Precepts. 3q5 The precept of the Church is broken: unless fraud is committed, because the law is violated, he who does something in fraud of the law. Therefore, the reason for this sentence is, although one does not sin by breaking a fast while drinking wine to quench hunger, yet he sins by frustrating the end of the fast.

This sentence is probable, but to me the opposite sentence is more probable, which those maintain in book 5 chapter i doubt 23 note 3. In book 7 chapter 10 question 6 they: today he calls certain [things] definite, and . The same authority cited teaches: The statute positively establishing the law does not direct the intention of the observer, but the very act itself, because the mode of virtue does not fall under the precept, but is the end of the precept. Si igitur modus virtutis vel finis praecepti non cadit sub praecepto, ergo non peccat contra praeceptum qui modum virtutis seu finem praecepti non observat, quia utitur jure suo. Neither does it hinder to say that if this were so, he would not sin who took upon himself labor without just cause, in order to be able to break the fast; which is false, as we shall say in the response: to set aside an impediment against a precept is one thing, and to set aside the end of a precept is another; for when labor is undertaken so that fasting may not be observed, sin is indeed committed against the precept of fasting, because the Church, by enjoining fasting, prohibits gluttony, in order that no proximate impediment be placed to fasting; in our case, the drink of wine to allay hunger is not contrary to the fast precept, but to the end of the fast, which does not fall

under the precept, and thus such a drink is at least not grievous sin; perhaps it is neither venial nor mortal sin, because the purpose of the fast is not entirely frustrated by the drinking of wine, as it is frustrated by the consumption of food, which the Church prohibits. It is asked.

Does the drink made from barley and cherries fermented, or water mixed with sugar and cinnamon juice, or apple cordial, commonly called Lemonade or Sorbetto, break the fast? Certainly, if a moderate amount of water is mixed in with this quantity of things, about 506 liters. The fast is broken: secondly, if a small quantity is mixed with much water, because then these are judged to be true drinks inasmuch as those which are mixed with water lose their proper nature and appear to have lost it. Thus commonly Eblel t. 2 p. 156 n. 433 with the most common, Concina t. 5 p. 204 n. 9. . 10 art. 1 n. 8. Mazzotta t. 1 p. 425.

Croix l. 3 p. 2 n. 1202. cum Leand. et Steph. c. 2 n. 57. It does not hinder to say that water mixed with sugar; when it congeals, it changes its nature; because a change in nature implies a privation of prior essence, from which there can be no return: but frozen water melts immediately and flows away, therefore it does not change its nature. It is confirmed: if the ice were to change the nature [of the substance], it would happen that after Consecration in the congealed species of wine Christ would cease to be there; but this is contrary to the rubric of the Missal (c. 10 n. 11.), where it is prescribed that if the Blood were to congeal, it should be liquefied by fire and consumed. You shall understand: if anyone presses out water with his hands and yet drinks the juice, fasting is broken; whence it makes no difference whether that which has been liquefied is drunk. But it is replied: The liquid within the grapes is not indeed in a drinkable form, but in a form of food, and is swallowed by mastication; whereas frozen water is no longer swallowed through mastication, but is introduced into the mouth, quickly liquefying by its own mouth's heat and returning to its former state, thus not losing its nature as a drink, and being regarded as such. 123 Inquiry III.

Is a drink made from chocolate capable of breaking the fast? The first opinion, which Cardinals Brancatus defend in their tome 12, page 93, dubium 28, part 1, page 337, note 21, question 10, article 1, note 8; also in book 4, chapter 5, section 2, note 13, who attests that even probable he considered C. de Lugo; deny that fasting is broken, but only if the use of such is made, as in Mexico; not however, if it is taken in the manner of a dense gruel, for example, like thick porridge. Dub. I. Of the Precepts of the Church. 307, water is mixed in greater or equal quantity.

The foundation of this proposition is, as some of the cited AA. state,

because the reason for the drink is taken from the predominant matter, which here is water. And in this manner the cited Authors understand this potion to be capable of being taken so often; whenever it shall please; and they quote Hurtadus, and Illsung, among those. Pius V. and Paul V. The second opinion, which they hold, is found in 1.5 c. 1. dub. 23 n. 1. Sylvius 2. 2. q. 147. art. 6. . 4 tr. 8 c. 1.

P. . 23 c. 2. n. 60. 4 R. 194. . 9 c. 1 q. 6 R. 3. 4n. 5 §. 2 n. 9. et alii plures, docet frangere jejunium. Reason, because that drink alone has the nature of a beverage which serves as a carrier of nourishment, and not as nourishment itself, such as milk and juice; similarly, so too with chocolate. Again, if anyone were to crush fish and draw off the water, this would not break the fast. Nevertheless, this does not prevent me from finding the first opinion more probable, provided with limitations, as I will say below. Reason, because a drink made with chocolate, although it does not have the nature of a drink since it does not quench thirst as certainly I feel it should not, and although it nourishes in some way, nevertheless has the reason of medicine so far as it assists in carrying food to the head or in strengthening the stomach.

Hence concerning this drink, the same can be said as we stated above regarding electuaries n. 1019. c. 2q. 147. art. 6ad. 3, where it is written: Electuaries and similar things do indeed in some way nourish, but they are not principally taken for nutrition, but for the digestion of foods; hence they do not break a fast, any more than the assumption of other medicines does. But in this manner medicine will not permit the consumption of chocolate, except in small quantity, and when there is some reasonable cause, in the same way that the use of electuaries is licit. Hence P. Milante in his treatise, speaking about electuaries, correctly says: Therefore also for the purpose of strengthening the stomach with moderate quantities of present chocolates is permitted for virtuous men. An additional extrinsic reason is added 508 L. III.

Treatise. VI. Of that which is more universal and perhaps preferable, namely the custom now commonly received today, which cannot be denied and which is also detracted from in cc. ac Felix Potestas n. 2879. cum supra c. ubi sio ait: (I said chocolate breaks the fast; yet it has an extrinsic reason by which it is made certain to me that the fast is not broken: This, however, is based on universal custom, which the tolerant Princes of the Church know and tolerate, a custom which derogates from law). But this reason for custom (even in another case) is confirmed from D. Thom. 2. 2 qu. 147. art. 4 ad 3 in fine where, speaking about workers and pilgrims, he says that they should be excused from fasts if necessity threatens; and then adds: It seems necessary to refer to the superior's

dispensation in lulls, unless perhaps it is customary there, because from this very thing, by which the Princes dissimulate, they seem to give their consent. When however, by reason of custom, chocolate is admitted as a drink, I hold that this custom does not exist, unless for one cup per day not repeatedly many times, as others say. What quantity, however, is deemed small, and hence permitted to be used today according to custom?

Indeed, it is probably thought that Pasqualigius in his Treatise on Fasting would consider no more than a half ounce of chocolate to be a small quantity, so that it might be taken as such; he ineptly says that this kind of quantity will nourish more than six ounces of any other food: hence he allows only an eighth or sixth part of an ounce. And to this opinion seems to adhere P., who says that only something of powdered chocolate can be admitted when mixed with water, so that the water may become flavored and the stomach tempered: but n. 6 does not doubt that chocolate can be taken as a medicine in the manner of electuary. On the contrary, however, paragraphs 63 merit rejection and paragraph 37 by Turrian permits a dose of two ounces of chocolate. Others, as Pinellus according to de Praec. Eccl. D. 2, q. 1, x. 6: permit they one ounce and a half of chocolate, Cap. III.

Dub. I. Of the Precepts of the Church. Five ounces of sugar. However reasonably, Card. Brani-catius admittit potionem unius unciæ chocolatis (cum quinque unciis aquæ, ut ait) non frangere jejunium; Vel, ut admittunt Escobar l. cit. in fine., una uncia chocolatis cum dimidia sacchari.

According to current practice, P. Milante l.c., p. 256, writes thus: I say that in the present it is absolutely licit to consume a chocolate potion in a moderate quantity of six and one-half ounces (that is, an ounce and a half), for what little matter introduced by custom and tolerated by the Church completely excuses from guilt. I said this out of the tolerance of the Church; what about the commended permission today, chocolate taken in the aforementioned quantity as a communal drink, sanely avoids guilt merely on the day permitted. And indeed, it is very probably the case, as my observation confirms, that chocolate is commonly immersed in an ordinary cyathus no less than an ounce and a half. It is said however. But this seems contrary to common usage, and it does not suit what he himself says.

Power; namely, then chocolate does not have the reason of power to be taken, since that equals the quantity of water. Wherefore it seems better that the aforementioned permitted quantity be taken with water which customarily uses common cups. 2. Potestas; etc. namely, then chocolate does not have the ratio of power, since that [chocolate] equals the quantity of water. Fasting is not dissolved by a morsel; for if this were

otherwise, such things would be ordered not for nutrition but for sleep: because custom permits it. I add, vespertinely: for it is not permissible to take that in the morning or midday without cause; yet both are permissible on account of just cause: as if it be due to weakness, business, studies; otherwise it will be only venial, since the substance of the fast is not violated. *(Ibid. 10 c. 2 n. 82*.

» and common. They say in the same place: that voluntary fasting is sufficiently allowed for a just cause at common times. 510 L. III. Treatise. VI.

Regarding «Quòad ejus quantitatem, communiter designatur» the fourth or fifth part of the whole meal is commonly designated, as against » 4 R. i i 7 c. 2 l. 6 » n. 185. 27 p. 2 c. 29. 7 » n. 33 dicens, ità decisum esse in celebri Academia Theologorum, qui omnes in quartam partem con- senserunt. The same is proven by Escob., tom. i, E. i, 3 c. 3 n. 6 i; namely, that if the ordinary meal does not exceed two pounds in weight, because such a thing is considered slight in other precepts, and consequently one sins more or less according to the greater or lesser transgression. Add that, according to custom, in some places seculars are permitted more than religious, nobles more than plebeians, and in cold regions more than in others, as notes 4 t. 8 c. i. Bon. l. c. Item plus quibusdam in locis in vigilia Nativitatis Domini et alibi in coena Domini permitti ex consuetudine dicit in opusc. » Escob. l. i E. 9. c. 3.

Which Bon. does not disapprove; where that custom has been received. As regards the quality, in that prohibition, foods are forbidden which are commonly ordered for nutrition, namely they are almost always placed among side dishes. Light things are permitted, such as fruits, other things made from sugar, and honeyed confections; and according to the custom of the region. Little butter and cheese, just as in northern regions on account of fruit scarcity. . c. n. 9. At the close of the repast, two things are to be observed in the evening meal, namely, the quantity and quality of the food. But this above all must be observed beforehand, especially that custom of places should be attended to, as Cajetan 2. 2. q. 147 n. 6 § 2 and others frequently remark: For certain it is, that when a custom is in question, both regarding canons and regarding all other laws of the Church, which no one denies to be derogable by means of custom, the authority of more recent Doctors, although fewer, who alone can bear witness to posterior modern customs, should be given greater weight, and if there is any doubt, it should be preferred to the authority of the more common Fathers of olden times, who could not possibly know anything about introducing a custom thereafter.

When, however, Authors testify concerning some custom, it is not to be believed that they have asserted this rashly and without sufficient foundation. Given these premises, it is evident that formerly, apart from one single exception of tasting, no other alimentary refreshment was permitted. By the passage of time, it was introduced that something might be taken of fruits, herbs, or sweetmeats for medicine, so that drink might not harm, as D. Antoninus and Cajus testify from their own time. Afterwards, a custom prevailed, that for nourishment also something of bread and fruits might be taken, even up to three or four ounces, as some DD. said; or up to six, as others thought. But as regards the quantity of the recent things, some, like Reg., say.

Croix l. 3 p. 2 n. 1299 cum Bus et p. 387 n. 27 dicunt ex consuetudine permitti jejunantibus quartam partem cenae; Sed haec regula non multum mihi arridet, nam vel potest esse nimis indulgens, et ideo reprobant eam 23 c. 2 n. 71 et Diana p. 1 tract. 9 R. 1 cum aliis, vel saltem est valde obscura, scrupulisque obnoxia. Therefore others commonly assert; they permit a morsel of eight ounces of food: thus Palaus t. 7 tract. 1 D. 3 § 2 n. 7. Thus today the practice of timorous ones is so held, tit. q. 10 a. 3 n. i. 4 c. 5 § 3 n. 1. 180 n. 493. Felix Potestas de Pr. Diana p. 1 tr. 8 R. 1 qui ait, hanc sententiam ab omnibus admittendam, et . ex . The same is confirmed by P. Milante in the proposition.

Alexander VIII. Exercise 23 p. 258, qui Auctor, licet rigidarum sententiarum fautor sit, tamen non dubitat sic asserere: (Ut quenula ista innoxia sit, debet esse 3 2 L. III. Treatise. VI.

Of the Eighth. Prior. and Precedent. A church so small that its weight does not exceed the measure which is taken for sustenance; in such a manner all men who are replete with piety and doctrine teach and lead to practice. I said "ordinarily," because justly it may be of greater weight on account of a just cause, namely when someone has a greater need for nourishment. This they themselves commonly admit as final. Because of which, since they consider it. 3.

He steals t. 2 n. 180 n. 484. and Diana according to Croix l. 3 p. 2 n. 1300, two ounces in refectiuncula do not consider a great excess of weight; consequently they should hold that the one who needs greater nourishment is excused from guilt, and by only two ounces exceeds the table setting. Moreover, the quantity of eight unciae having been received in use today, it is indiscriminately permitted, even to those for whom they are intended until satiety; as they say, 3 Croix n. 1299 with 1. Ebet l. 1 p. 180 n. 491 et Holz m. 1 p. 339 n. 24 cum communi. In the Vigil of the Nativity of the Lord, according to custom, a quantity double is permitted,

as they say in . 3 n. 2. Holz m. n. 25.

Cons. l. 5 r. 1 dub. 26 n. 6 cum § 2 n. 7 et quia hanc asserunt esse consuetudinem Ecclesiae ab omnibus receptam. However, Mazzota denies that this custom is present among us; and I, while admitting a double refectory at Croix n. 1301 c., do so even if the Vigil of Nativity comes on the fourth day of the week, that is, even if the Feast of Nativity falls on a Monday, because it is consonant with the reason for joy and solemnity. More probabliy, c. n. 6 advertiseth, that if any one should anticipate the refectiuncula in the middle of the day, he would not be able to exceed eight ounces, because then the Festival has not yet begun. In the Vigil of Easter or Pentecost they say that a double repast is not permitted; but one can take only ten or twelve ounces according to custom. As regards the quality of food taken in the repast, it is now commonly held that today one may eat bread, fruits, oil, herbs, and confections. However, in the evening collation, attention should be given only to the quantity of food; so that from all the foods which can be eaten with fasting on a day, even fish, fowl, lamb, etc., still may be taken at supper. It seems to be added by Bon. de Prae.

Ecclesiastici D. ult. q. i p. 3 n. 3 dicens: Ex quo patet, in secunda refectiuncula magis servandam esse quantitatem quam qualitatem cibi. One must not unconditionally assent to this opinion, for there is doubt [about it]. Whether it be permissible for him to take eggs at table, when such things are permitted to him? They affirm Sporer as stated above in tom. i, p. 284 n. 32. with Pasqualig. and according to Croix 1. 3 p. 2 n. 1303.

But this is altogether to be denied, as they say, R. O. 3 n. 3 Potestas de Prae. c. et Fill. et Diana. Reason, because they are the greatest substances, and therefore commonly rejected from custom. They permit Busemb. as stated above, 4th treatise, 8th chapter, section i, note q., Holzmann, volume i, page 339, note 23, and Ebel, volume 2, page 276, note 483, to take a small amount of casci or butter for colder regions. However, Lactantius, Cyprian, and Mazzotta, in their first volume, page 427, permit this indiscriminately. This is probably admitted among us and introduced for use by many learned Juniors, and above all by my most learned Master and Most Illustrious Bishop D. Julio Torni, for those who have already been dispensed concerning dairy products, but not yet 314 L.

III. Treatise. VI. One should take more than an ounce of cheese, or up to one with a half. He also says that from twice-cooked eggs with meat, or with butter, no more than one or two ounces should be taken.

Here it must be noted that recently a certain confessor was supplicated for the Saints. To the Pontiff Ben. XIV., ut explicaret, an re vera liceret in serotina collatiuncula parum casei sumere iis, qui in Quadragesima et vigiliis sunt dispensati ad lacticinia? The Supreme Pontiff transmitted the supplication to the Sacred Penitentiary, which responded as follows: The Sacred Penitentiary, optima conscience of its Holy Mind according to special authority from itself, responds that it does not permit. Reasoning is given, as expressed in the Bull Libentissime, by our aforementioned Pontiff Benedict XIV., that those who are dispensed to meats or to lacticinia have need of a portion of such foods and drink, which all strictly conscientious fasters use; this is understood of those rigorously fasting during the Lenten fast, in which both meats and eggs and lacticinia are forbidden.

Then arose a doubt whether the Sacred Penitentiary, most conscientious in mind, etc., had spoken according to its own interpretation, or according to the own Apostolic Oracle of the Pontiff? Therefore the same confessor likewise petitioned the Pope, that he himself might explain his own mind. The Response came (which I myself have authentically observed and now possess), in which it is said thus: The Sacred Penitentiary, by mandate of SS. The Lord, who deigned to read the letter with his own eyes as it was recalled, responds that it is true and to be held for true, which is attested by the same Penitentiary to have been a rescript. Given in Rome at Penitentiary on the 23rd day of July 1756.

But besides this, a doubt arose among some whether such a Declaration of the Pontiff requires universal promulgation in order to oblige the Faithful. A doubt arose from this, namely, that interpretations or declarations, even authentic ones, made either by the very Legislator himself, or by a Successor, or by his Superior, require promulgation in order to have the force of law. Nevertheless, we say that a distinction must be made between a declaration purely such, and a declaration not purely such, or one from interpretation. A pure Declaration is that which is clearly contained from the beginning in the very law, namely, when the sense declared is already entirely contained in the law; for example, if a law speaks of another thing and there is doubt whether it refers to a legitimate son or an illegitimate one; if the Legislator declares that it should be understood as referring to a legitimate one, then the sense is clearly contained from the beginning in the law. Nevertheless, the Declaration is not purely such, namely interpretation and that whose sense is not clearly infused in the law, but is inferred from some argument, for example, that by the name of Father even the Grandfather may be meant, by the name of natural death even civil death may be meant, and similar cases.

Hence we speak with common consent according to the judgment transmitted in 5 p. 3. § 3 n. 3 cum in § 1 n. 5. n. 543. eod. tit. c. 1. p. 47 n. 330. The Cross l.c. n. 824. 11. de n. 30: quod Declaratio purè talis illius sensus, qui clare jam inest in lege, non indigeat promulgatione, sed obliget omnes qui Declarationem illam jam sciunt: cum ipsa non sit nova lex, sed à principio in lege sit imbibita. Declaration against one that is not purely such, or rather the interpretation of some obscure or ambiguous sense which it is doubtful whether it is contained in the law or not, but is inferred from an argument, this kind of declaration, in order to obligate, needs promulgation. That rightly they say, c. § 1 n. 2 et l. 6 c. 1 n. 3, that all Declarations which are not made by the Legislator but by his Successor or Superior always require a new promulgation in order to oblige; Reason, because the Successor or Superior is not so much the open mind of the first Legislator as the Legislator himself knows it; hence, even if they explain some sense already existing in the law, they always need to recur to arguments and interpretations, and therefore they seem always to establish something new. At least (as P. Suar says in leg. 1. 4. c. 14 n. 3.), such Declarations, insofar as they are responsive declarative responses of the Pontiffs, oblige to a guarded interpretation, or to the preservation of the ancient §16 L.

III. Treatise. VI. According to that interpretation of law. And furthermore he himself in the same Suarez, book one, title six, chapter one, note three, thus adds: That the authentic interpretation may be such, it is necessary that it have the conditions of the law, that it be just, sufficiently promulgated, etc. Hence it follows consequentially that this interpretative law has been laid out for other doubts; so that other interpretations become necessary.

When these premises are established, it is concluded in our case that, since the explained sense has been given by the Pontiff, the very legislator of the law itself (namely, that 'jejunantes' should be understood as rigorously jejunantibus), now the whole resides in the law; for everything which signifies abstinence both from flesh and from dairy products is already contained in the word 'jejunantes'; hence this Declaration does not require promulgation; firstly because the explained sense has now been imbibed into the law, and secondly because it has been declared by the very Legislator himself. But after these things written, the Reigning Pontiff Clemens XIII removed all doubts in this point by a Bull which begins "Appetente," on the day 20th of December 1759, saying: He should take care that all things rooted from infringements of fast laws, or commentaries of opinions, or customs abhorrent to the true nature and spirit of fasting, which are inventions of human depravity, be uprooted. In quibus profectò abusum illud censemus omnino numerandum, cum

nonnulli, quibus ob justas et legitimas causas dispensatio à abstinentia carnium fuerit accipienda, licere sibi putant potiones lacte permisæ sumere: contrà quam prædictus Præcessor Noster censuit tàm dispensatos à abstinentia carnium quàm quovis modo jejunantes, unica excepta comestione, in omnibus à iis, quibuscum nulla est dispensatio, equiparandos esse; ac propterea tantùmmodo ad unicam comestionem posse carnem vel quæ ex carne trahunt originem adhibere. What, however, has its origin in flesh, is found where it is said: "Those which have their origin from flesh, as are eggs and dairy products." Therefore, to those who have been dispensed, another food is not permitted at the collation, except that which is permitted to those who have not been dispensed. 1025 Doubt II.

Whether fishes may be permitted at the coenula? Here many are the opinions of the Doctors. That is excepted from the Chapter III. Doubt. I.

On the Precepts of the Church. 51y they deny unanimously, as they assert, even if the fish be small and perchance taken; because, as they say, this custom is nowhere found. However: it is conceded that cooked fish with salt are permitted. Article 3, note 3 holds that cooked fish, whether small or large, are today not forbidden; and it asserts, assuming this custom to have already been introduced. And Sporer in loco supra citato p. 284 n. 32. et p. 176 n. 483. et . March. Pasqual. and Burgh. according to Craix, lib. 3, p. 2, n. 1302, say that it is licit to eat fish according to today's custom in a meal, provided that the proper quantity is observed.

Otherwise, no. Mazz. tom. 1 p. 427 probabiliter ajunt, hodie ex consuetudine jam apud nos recepta (quam mihi confirmarunt alii docti et probi Juniores) posse sumi in coenula exiguam partem, v. gr. duas vel tres uncias piscis majoris. Which custom confirms and approves as lawful M. With Milante in favor. Alexander consents and approves as lawful M. Milante in prop.

VII. Exorc. 23 ubi ita scripsit: Nec scrupulosus quidem Theologus audet inficiare (licitum esse vesci pisciculis recentibus,) praesertim, quid viri pudentes ac docti, imo Regularium Communidades eisdem vesci in antipaschali jujunio consueverunt. That I may openly present my opinion on this matter, attentive to the current discipline, I think that even large fish can be permitted in the same quantity without any scruple. Wherefore, just as it is permitted to eat large fish at today's meal, similarly it is likewise permitted to partake in a banquet with due moderation. Doubt is present.

Whether it is permissible to take eight ounces of baked bread cooked in water and oil. The first opinion affirms this, which Diana holds on page 10, treatise 14, rubric 58. 1, page 284, note 32, with Bassco, and in the last question, page 3, note 3, citing Az., book 7, chapter 8, question 7 (but not well, for there Az. admits nothing else but some bread, lest other foods should be harmful); likewise Elb., 1:2, page 181, note 499, who calls it the most probable view, and 4, treatise 8, chapter 1, note 9, says that it is not devoid of any probability. Reason, as in 3.18 L. III. Treatise.

VI. They say that it should be taken all at once; firstly, because if bread and drink can be taken consecutively, why not simultaneously? Secondly, although the bread increases in weight, nevertheless it does not acquire the proportion of a greater substance with regard to nutrition, but only the proportion of temperament for carrying food. The second opinion holds that it should be denied, and this is taught in 30 D. 3 p. 2 n. 6. c. Fill. tr. 27 p. 2 c. 2 n. 30. Cross l. 3 p. a n. 1303. 4. c. 5 §. 3 n. 2 qui oppositam non audet vocare probabilem, item 23 c. 2 n. 77 cum et Reg. idemque sentit 10 art. 3 n. 4 qui asserit hano esse communem et contrariam non esse sequendam ut communiter rejectam. Reason: even though, let it be assumed that bread cooked in water would not change its nature, such a type of vessel is nevertheless very little received by custom.

Reason 2, because truly bread, through decoction and fermentation with water, acquires another nature, and thus it comes to pass that what is one bread and water becomes one substance greater, and they cannot be separated from each other. I hold that only itself it is deemed fitting to admit with c., namely, when one, using the act by which he restores himself, pours bread into water or wine immediately; because then fermentation does not intervene, and the liquid serves as a vehicle for the food. Nor unskillful, which they allege, namely five ounces (or four suls, as he says). It is probably licit to consume a jug of cooked herbs in water and vinegar, or oil and wine, as Palau states on page 2, section 2, note 6, 14 R. 58 with 8 and 10 a. 3 note 3 with Bonaventure and ip. 427 ac et p: 130 Resp. 5, if there be some cause, for others to be venial. Nevertheless, he properly observed that oil and vinegar should be reckoned in terms of weight and there is a reason for this, because oil and vinegar truly do not have the nature of drinkables.

They admit eight ounces from legumes cooked by fire; but they deny it in Chapter III. Dub. I admit eight ounces from legumes cooked by fire: But they deny it to be possible Cap. III. On the Precepts of the Church. 51: to take cooked lentils with water, because (as they say) this is opposed by custom; But Escob. tom. 12 l. 45 dub. 54 num. 203 et 204 32 et . 483 concede that. Furthermore, what was said above about decocted bread

seems even more applicable to lentils, which provide less nourishment than bread.

3. In Confessione non sufficit dicere, non servavi, sed addendum est utrum refectio multipli- cie, an esu carnium. And, si hoc, utrum semel, an saepius quantitatem notabilem sumpserit: quia probabile satis est, etiam in hac materia, parvitatem a mortali excusare, ut docet ult. If a cook or a sick minister should taste meat somewhat before the meal, Ex. c. l. n. 54. t. 2 l. 5 c. 1 dub. 12 n. 10 *. (Medium uncia carnis, says Pasquale to be materia parva, but it is rightly rejected d 1305) * or from other foods let him take only a quarter of the evening collation, whether one or two ounces: for this would be materia parva, according to Turrian: and if he should taste somewhat several times on the same day, he would sin gravely; because those matters would coalesce into one great matter, as Diana teaches p. 3 tr. 6 R. 43. An addition is the authority of the Pontifical condemning the opposite opinion.

See Proposition 29 among those proscribed by Alexander VII. Finally, whether in Quadragesima you have broken the fast by eating eggs or dairy products? Although even so. R. 54 and t. 6 misc. R. 82, citing many Doctors, says that it is certain that to eat meat, and dairy products in Lent is mortal, if not by positive law, at least by custom, received almost everywhere in the parts of the world: yet it is probable and safe (at least in the parts of Germany) only venial.

Fugund. l. 1 c. 2 etc. Tum 'quia, licet consuetudo habeat, ea tamen non sem- 520 L. III. Trace. Six. Of the Eighth.

Before. And before. Fill. t, 27. 3 Tum quia Ecclesia non tam graviter ad hoc obligat; ut patet tum ex verbis ipsius, tum ex facilitate dispensationis in his, quam in carnibus, * (Sed hodie hoc est improbabile ex Prop. » 32 condemned from above. referred above n. 1007.) » On what account even the use of oil and fat is more easily conceded to the poor teaches Lay. l. 4 t. 8 c. 1 » n. 5. But he says: Nor should a rich man be continuously condemned for the use thereof as mortal sin, especially since Sylv. says that fasting and others say that one to whom the use of eggs and dairy products is permitted, even the use of lard and cheese should appear not to disapprove, Az. l. 7 c. 10 q. ult. V. . 2 n. 20. ubi dicit, pinguedinem inter carnes non computari.

See. . 2 n. 20. where it says, "fleshly fat is not to be counted among meats." But everywhere it must be considered what the pious custom receives, from which one ought not to deviate rashly. Az. l. 7 c. 10 q. ult. 4 (Vide

dicta n. 1010.) Dixi: si sit in Quadragesima; quia extra eam licet vesciri ovis, qui debet jejunare, vel ob Jubilaeum, Henricus etc., vel ex poenitentiae sacramentali, Fagius vel ex votis, aut in vigilia. V. Dian p. i c. 9 » R. 5 et 6* Vide dicta n. 1009.

» It is asked I. Whether he who has sinned on a day of fasting by eating twice in notable quantity will gravely sin if he eats again? The first opinion affirms this, which Wiganclt maintains on page 140, note 101. Resp. 3. Sylv. v.

Fasting, n. 22, p. 154, n. 46, with Med. et Henno: likewise Major, and Montesin. cited in . » Number 7. Reason, because, as the precept of abstaining from flesh foods is negative, so he who consumes them incurs a sin each time he eats them, according to all who assert this with n. 29. But it is however negated the secondary common opinion, and the more probable judgment, which those hold with c. 1, n. 42 and 45. n. 8. Analecta page 386 note 20.

Mazzotta vol. i p. 326. Palaus vol. 7 tr. 1 D. 3 p. 2 §. 2 n. 8 cum Caj. Good. Therefore, chapter and chapter two note forty-seven with Bonaventure and Bassus. The reason given by others is as follows: because the precept of fasting is positive, since it principally commands a single food intake, hence it does not oblige always without exception; and thus he has not grievously violated that precept by resting from eating again; but this reasoning does not hold, for if this were a mere positive precept, he would sin who ate nothing throughout the day. The second reason is more compelling, because the essence of fasting consists in the vice of gluttony, as clearly teaches Decretum 6, which says: "It has been established by the moderation of the Church that those fasting shall eat once a day."

Therefore, when the essence of fasting is destroyed, the precept ceases. The reason for the precept of abstaining from flesh is different, because the essence of the precept consists in single eating; for having made a second meal, the fast has been broken; hence he who eats twice is not thereafter bound to fast, since he cannot further observe the fast. Add that this precept is commonly interpreted thus D.D.; and this alone renders our opinion more probable. I myself spoke at least gravely, namely c. 2 n. 17. 27 n. 24 et Croix l. 3 p. 2 n. 1265 cum communissima (contra Pal Anacl. et . cc.) say that it is venial because it is contrary to the end of the law, which is mortification of the flesh: and indeed more probabiliy [sic], because some inordination against the end of the law does not seem to be excused from any guilt. It is asked H.

Whether he who, without guilt, has eaten twice in one day is bound to abstain from a third repast? They deny it in the last question of D., part 1, page 3, number 8, chapter on page 335. Eblell, c. et 1 p. 285 n. 3q. Because, as they say, in the case of inadvertence, the essence of fasting has already been destroyed. But they affirm: As stated above. Reason, because he who has inadvertently broken the fast has materially but not formally broken it; hence . 323 L.

III. Tract. VI. When he first directs his attention to the law of fasting, he is bound to observe it, so as not to formally violate it. Both opinions are probable, but according to what was said in the preceding.

The first question seems more probable. It is asked here in the third place whether it is permissible for innkeepers indiscriminately to serve all kinds of food and meats to everyone on days of fasting? It is affirmed in Article 10, Note 7, that even if there is doubt whether someone seeking an exception should be excused, they must still be questioned; for in doubt no one is presumed to be evil. But even if they certainly know that he will not be excused, the innkeepers still allow him to invite to dinner; because, as they say, that invitation is understood as conditional, namely, if you wish to eat, eat with me. Concerning flesh indeed he says.

But these two last we do not admit except permissively, and a serious cause excusing from the sin of scandal must be present, as we said in lib. 2 n. 80. DOUBT II. Which causes excuse from fasting? 1031 Four are the causes excusing from fasting, I. Dispensatio. II.

Impotence. III. Labor. IV. Piety.

See all that Busenb. says on 1032 I. The cause is Dispensation; for they can dispense from fasting 1. Pope. 2. Bishops. 3. Parochi. 4.

Pre-lati, de quibus singulatim agitur. 1033 II. The cause is Inability. By what excuse are they excused from infernal impotence, 2. The Poor. 1034. By what excuse are they excused from Moral Impotence?

Resp. Quinam se excusent de impotentiâ morali? They are excused 1. Who labor in head pain: Or who cannot sleep: But are those who suffer bound to take constantly a suppositum? Soldates. 3. Do uxores timere indignationem a viris, et unī virī qui non possunt reddere debitum? 1035.

Teenagers. 1036. 5. Old men. Dub. 1. Are robust men of sixty years old bound to fast? 1037. Dub. 2.

Whether women of fifty should fast? 1038. Dub. 3. What concerning the elderly who have made a vow to fast? Chapter III. Doubt. II.

Of the Precepts of the Church. 3:3 on joining? 1039. Dub. 4. Whether religious men of sixty years are bound to fast according to the Rule? Dub. 5. Does a substituted fast, imposed by a vow of chastity, oblige sexagenarians? 1041 III.

The cause is Labor. What are the arts that are laborious in themselves? May tailors and shoemakers be excused? Are Painters, Writers, and Clockmakers excused? Are the Advocates, Bankers, and Sculptors excused?

Wh 1. Will the rich artisans be excused? Qu. 2. Are the rich artisans excused who can do so without great inconvenience? 1044. Q. 3 Whether they are excused on those days when they do not toil? 1045.

Qu. 4. Are those who take upon themselves labor in deceit for fasting excused? Qu. 5. Who are those who labor without a just cause? And who labors for a rare profit? 1047.

Concerning those who travel about. Dub. 1. What journey is sufficient for remission? Doubt. May those who use horses or mules be excused from this journey? 1048 IV.

Whether works of piety can be spontaneously undertaken? 1049. 1. When are those who insert things for the sake of the sick excused? 2. When do pilgrims go to holy places? 3. When Preachers? 4. When Cantors? 5.

When Readers? 6. When Advocates, Judges, Physicians, and other Professors? 7. When shall Confessors be? 1050. Whether those absent from their homeland are to be held bound by fasting in that precept? And whether to fasting where they are? Remission according to n. 1056.

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[TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions] Of the first chapter concerning their own Religious. Nevertheless, the confessor, although privileged, if he is not a parish priest: because he does not have jurisdiction in external forum, Sanch 1. c. contra.

» (Or attend to the cause for not fasting. . n. 5.) *. The valid cause for dispensation will be either true; or what is deemed such; for culpable credulity suffices. Item, cum quis bonâ fide putat se à jejunio excusari, etsi causa insufficientis sit, tamen tantùm venialiter peccare docet Cajet. » But if he truly thinks in good faith that he can be entirely excused, there appears to be no way in which he can sin. » 2. The cause is Impotence, by which those are excused who cannot fast without notable harm; such as youths up to the completion of the twenty-first year; although for them flesh meats should not be given after the seventh year.

Likewise are debilitated ones, infirm ones, convalescents, pregnant women, and nursing infants (even though it is said that nursed infants be robust, as in 10 Idem 3 p. 2 num. 134 with Bon.). The reason is because all of them commonly lack multiplied nourishment: even those who are sixty years old unless it is evident that they can go without food without damage. In dubio autem: an possint, non tenentur cum periculo tentare fortunam: quia cum deætate constet, et robur sit dubium; non est expectandum, donec deficiat; tumc enim irrecupérabilis est defectus. Gratissimum est tomum secundum decimum sextum tractatus tertium paginam unam decimum sextum: sed novissima quinta nomen tertium quaestio. Escobarium quartum tractatum octavum caput tertium. Your. 2 2 d. 3 q. 3 dub. 5. Fully. tum. 2 tr. 27 p. 2 c. 6 et » the rest commonly, contrary to Nap.

Sa, 7 d. 32 w. 17 et par. 2 considiuit. 6 c. 1 d. 4 n. 9 q: item Dian: p. 1 tr. 9 R. 20 etc; qui absolutè, sinè omni restrictione; sexagenarids omnes à jejunio liberant: Quam sententiam Trail. tamquam communiores et magis conformem temporis, et imbecillitatis humanae, ut ait, sequitur (cum Molf. 3 c. 2 d. 7 n. 3 præsertim cum à scrupulis quibus exponit contraria liberat. Certain ones furthermore extend this to those who have vowed fasting on certain days throughout the entire time; they add that it is probable what suffices, if a period of sixty days has been begun, that in the favorable days it may be held equivalent to a complete one. Diana page 5, treatise 14, reason 83 from Naldo, and from others six. In the same age, as well before the year 21. Regulares non tenendi ad jejunia sui Ordinis, probabile affirmat Ex aliis 4.

Finally, those who do not have any other food besides the forbidden one, or insufficient food for a single meal. Vide Gabr. et aliis 3 quia nemo tenetur pervertere ordinem refectionum. 3. Vide Gabr. et aliis. Labor, or office, is the cause why jejunium cannot consist with it, such as that of husbandmen, and of many artisans, like that of smiths, bakers, shoemakers; etc. (although concerning shoemakers the Angles deny this;

whose sentence Sanchez says to be true, if they do not merely cut leather and prepare material); yet not with painters or tailors, because their labor is too slight. It also excuses T. 8, fig. 3, t. 4, argen-terios, lignarios, fuliones, cementarios, coriarios, et textores. Q. 6, c. 18, versantes prelum typographicum, non tamen typorum compositores: fossores; autem ferrarios, et similes, etiam in die uno vel altero, quo non laborant, excusat Azor: etc., cum T. 9, R. 9.

Similarly are excused those who with their feet make a journey through a great part of the day, as it is said 3. Labor or office is the cause why jejunium cannot consist with it, such as that of husbandmen and many artisans, like that of smiths, bakers, shoemakers; etc. (although concerning shoemakers Angles negates this, whose opinion Sanchez says to be true, if they do not sew, but merely prepare the material); yet not with painters or tailors, because their labor is small. Even they are excused: T. 4, t. 8, c. 3, figulos, argentarios, lignarios, fuliones, cementarios, coriarios, et textores. 138 et Gor don. T. 2, l. 6, q. 18, c. 6 versantes prelum typographicum, non tamen typorum compositores: fossori: autem, ferrarii, et similes, etiam in die uno vel altero quo non laborant, excusat Azor: etc cum T. 9 R. 9. Similarly are excused those who with their feet make a journey through a great part of the day, as it is said in 326 L. III.

Treatise. VI. From "in opusc. loc. cit." See. The reason for all these things is, because commonly the powers of these do not suffice for such labors with fasting.

I said with my feet; because many do not excuse the knights; yet long equitation is taught to be for many days, according to V. From the same head, Doct. They excuse the spouse, if she cannot repay the debt, when fasting; similarly and the wife, who by reason of her frailty cannot, while fasting, render herself pleasing to her husband. Good [reference] cited above. And, speaking generally, no one is bound to omit an obligation imposed upon him for the sake of a precept of fasting, says Cajetan.

What I understand is, unless this obligation is very light and reasonably postponed to the fasting obligation. 4. It is Piety, or a greater good. Wherefore except for those who cannot engage in better works through fasting, such as, for example, Preachers.

Preceptors ordinarii, Confessors, Cantors, et quotquot opera caritatis et misericordiae tam corporalia quam spiritualia exercent, etiam ob mercedem, si ea cum jejunio peragere non possint. Fill. t: 2 tr. 27 » p. 2 c. 6 n. 24. 7 c. 28. Fern. etc. Et quidem omnes hoc intelligunt, et quasi

addunt, quando laborum earum cum jejunio non possent consistere. But Diana (speaking broadly) p. 1 t. 9 R. g. Preachers who are accustomed to preaching on the days of Lent (I understand this to mean universally) think themselves excused from fasting; because, says he, they labor excessively. Nor do they consider those excused, who preach only on Sundays, unless they be weak.

Sanchez tamen in consil. p. 2 l. 5 c. 1 d. 13 n. 6 et 7. . 3 c. 3 d. 7 putat à jejunio. Quadragesimæ communiter et regulariter excusari: eos, qui ter vel quater in hebdomada concionantur cum fervore. Readers however . c. when . He considers that not all should be excused, but only those whose labor is arduous; or who are so weak as to be unable to fulfill the duty. The same is nearly of opinion, thinks, Readers, those who daily read four lessons (as the grammatical preceptors do in the Society), if they suffice by fasting during the middle of Quadragesima, or three times in the week, because of the great labor and few annual annisics that will be fatigued, so that they cannot progress; thus he.

But it is advantageous that Superiors, in order to dispel scruples, grant dispensations in such matters; as he himself admonishes: For in all these cases a certain rule and universal statute cannot be established; since the law of the Church does not obligate with great difficulty, even if the appetite of the infirm is appeased by eating little, and even less so of the flesh. 5 R. 32. "Therefore, four are the causes excusing from fasting; 1032 I." Dispensation. II. Impotence.

III. Labor. IV. Piety. I consider it proper and carefully to discuss this separately, since all these matters pertain to practice and necessary knowledge.

But with great diligence I took care to observe many Authors on this point and to collect them here, so that the authority of the Doctors in this matter may contribute to intrinsic probability, since it concerns a question which greatly depends upon the estimation of the Wise. And because it will be necessary for me to frequently cite these same AA. in what follows, I gather here the places from which Doctors have treated this point, observing them, so that I do not always repeat citations: These are l. 5 c. 1 ex dub. 1 pag. 90. 4 tràct. 8 c. 2 pag. 144. 4 c. 2 pag. 590. Azorius vol. 1 lib. 7 cap. 17 ex p. 380. Petrocorens. tom. 2 ex pag. 191 c. 3. Escobar. tome 12, librum 94.

Palau's treatise 30, Decretals 3, part 2, section 5, page 22. Bon. tom. 2 de Præc. Ecclesiastical Doctor ultimate, question first, part ultimate, page

413. Page 328, Line 328.

III. Treatise. VI. From Concina, volume 5, preface, page 308. Appendix by Sporer to 3 286.

Roncaglia trans. 9. from 266. trans. 23 c. 2 p. 7 page 362. Wigancl tr. 5 E. 4 pag. 137. Eccles. tr. 1 c. 3 pag. 335. From belly translation 2 chapter 5 page 414. 4 chapter 5 section 7 page 392. Cross l. 2 p. 3 ex n. 138. . 4 c. 5 §. 7 pag. 140. . 2 Conf. 18 pag. 183.

Mazolta tom. 1 de 3 Praec. D. 1 q. 4 § 4 p. 428. Felix Potestas de Pr. The Church from page 308. Henry tom. 2 de Pr. etc. ul infra.

I. The cause is the Dispensator; concerning which it is queried whether he can dispense from fasting? Resp. 1 Papa habet potestatem dispensandi a jejuniis per universam Ecclesiam, et quidem valide etiam sine justa causa, quamvis non licite. How, however, does one sin by dispensing without a cause? More consider it a grave sin, as is stated by the Council of Pavia on page 330, number 2, and Soto, Covarruvia, regarding whom they think this to be probable, because it would be against the common good, to which laws are ordained.

But they say with sufficient probability that he sins only venially. Ref. l. 8 D. 18 n. 7. 1 tr. 4 c. 22 n. 13 et c. n. 66 cum Basil. 2. Bishops can also dispense with their subjects in cases occurring, but only for just causes; otherwise, the dispensation will be null. If however the cause does not appear altogether sufficient for dispensation, or there is doubt whether it suffices, or even if it suffices, the Bishop may partially dispense and partially commute the fast into some other pious work, as they say Roncaglia c. 2 Reg. in praxi 4 et . 4 cum Cap. III. Dub. II.

Of Ecclesiastical Precepts. 5 3g to lift up from the infirm, namely if there be any danger somewhere that fasting not be observed, thus c. 18 g. 5. et . Armour. Table. Summa in Bulla Prodiit jam dudum. §. 10: (vide Bullarium,) dixit sententiam oppositam, nimirum non posse Episcopos pro universo grege dispensare in lege jejunii esse non modo communiorem, cum Leandri et Ferrarii, sed etiam magis rationi consentaneam. And thus he says that he responded to some bishops who asked whether they could transfer the vigil of St. Matthew occurring on the last day of the bacchanalia to the preceding sabbath. Hence himself Benedict granted them permission, that they might anticipate the said vigil for that year.

However, vicars of bishops cannot dispense except by special faculty

granted to them, as he says in 5 n. 5. Neither can Abbesses nor other superiors of nuns dispense, since they themselves do not possess spiritual jurisdiction; yet in some case they can declare that nuns are not bound to fast. Thus Concina tom. 5 p. 33 i. with others frequently elsewhere. See the aforementioned discussion in volume 4, note 53 and section 6, paragraph 3. Parochi, licet dubitelur inter DD. an ex vi juris communis possint dispensare in jejuniis, jure tamen consuetudinis cuncte id possunt ex justa causa cum suis subditis particularibus, non vero pro tota Paro-chia.

According to common opinion, which P. Concina holds on page 33 i n. 4, Ebel n. 504, l. 8 D. 9 n. 27, and 436 n. 19 maintains (although here it permits only for one or two days, whereas others speak absolutely), likewise with Cajetan: for it would be excessively burdensome to go to distant bishops to obtain a dispensation whose necessity arises on the day itself. See book 2, note 109, and law 3, note 288. But very probably the Parochus can dispense in those matters even in the presence of the Bishop; for although by right Parochi do not have this jurisdiction; nevertheless they have it, as stated at 330 L. III. Treatise.

VI. It is, by custom, what sufficiently can assign jurisdiction, according to c. Contingat de Foro compet. thus. These same Parish Vicars can also exercise acts of parish jurisdiction demanding it, unless the Parishes expressly object, namely, . Pasqualiq et. 4. They can also grant dispensations to their own subjects, and even to themselves, all Prelates of Religious Orders, even inferior ones, and Vicars of Superiors in their districts: Thus Concina p. 33 i n. 5 et . 503. with others commonly.

Reason, because Regular Superiors truly have spiritual jurisdiction over their subjects, so that they may provide for them in those things which pertain to the governance of their welfare. This, however, must be especially noted regarding all those who possess such a faculty of dispensation, which is commonly taught: namely, as D. Thomas says in II-II, qu. 147, art. 4, nimirum: If the reason is evident by itself, a man may lawfully dispense with the observance of a statute, especially if there be intervention of custom, or if it would not be easy to obtain recourse to the Superior. If however the cause is doubtful, one ought to recur to a Superior who has power to dispense in such matters. 1033 II. The cause is Impotence, whether Physical or Moral. Excuse is made from physical inability.

The infirm, while fearing that fasting might bring them notable harm; hence they say 527 and 5 n. 2: that if anyone persuades himself from experience or a probable reason that fasting would gravely harm him, he is not bound to fast. And therefore also excused are those who labor under a

tertian or quartan fever, or who have recovered therefrom immediately; likewise the weak who cannot take sufficient food in one instance, as stated at . 14 n. 11 with Sylvester and the English; and also pregnant women and nursing mothers, to whom they sometimes permit even flesh meat, if the child be ill, or danger of illness threatens the mother, or if the mother is weak. Doubtful. II. Of Ecclesiastical Precepts. 351 But they would rather sin if they fasted more than once; According to some, if any robust woman wished to bear with one or two fasts, as in Petrocorens, tom. 2 p. 108 with 2.

The poor are excused who do not have a perfect lunch for one adequate repast. Ita communiter Lessius c. 2 n. 40. . 14 n. 1. . n. 507. Th. 2. 2 9. 147 art. 4 ad 4 ubi ait: Illi videntur excusari, qui frustratim eleemosynas mendicant et qui non possunt simul habere quod eis ad victum sufficiat. Hence they very probably say 14 n. 3 with Angles, and (contrary to Mazzotta) that if someone had no other provisions than bread and lentils, or herbs, he would not be bound to a single meal: for although he might have been accustomed to such fare, nevertheless he sufficiently sustains himself because he is accustomed to taking several meals in one day, and in large quantities of those foods which are of small nourishment. However, even Moral Impotence excuses from fasting: 1034 and this is when fasting cannot be sustained without great inconvenience, or without a significant extrinsic difficulty which is equivalent to great inconvenience, as they say in Abelly page 412 note 2.3, and Croix note 1324; and it is not required of those for whom fasting causes severe head pain, as they say at 507 and 14 note 10; and also Gabr. 2.

Those who cannot warm themselves at night by fasting, or take notable time for sleep, are excused, as commonly taught by DD., according to 14 n. 10. But whether these are bound to receive a morsel in the morning so that they may eat later and thus observe the fast, they affirm c. 1. Reg. prax. 4. Concilium paginis 310 n. 41. . 2 n. 83. et Croix n. 1325. cum . 27 n. 4. Reason, because he who is bound to the end is also tried with intermediate not difficult matters. But very probably they deny it greatly 33 2 L.

III. Treatise. VI. From no. 507. Fill. tom. 2 tr. 27 c. 6 n. 130. . 5 n, 3. cum 9 R. 51. item Lap.

Sanctius, et At this reasoning is weak, for to transfer the refectio to vespers is truly not to pervert the order but rather to preserve it more perfectly, since this was the ancient discipline. The reason is stronger, because the postponement of dinner until vespers is truly a medium not only extraordinary but also gravely burdensome, since in it there is a notable increase in inconvenience, by which the ancient discipline has been

derogated, which was once observed with such strictness. 3. Soldiers are excused, whether they be in camp or in lodgings, as commonly stated by Concina page 323 note 2 practice 2 and both according to reason and custom because themselves undergo great labors, and also because at fixed hours they cannot eat nor have a suitable meal for fasting. Wives are excused too, who otherwise would suffer great indignation from their husbands while fasting, as stated in 9 D n 13 and 26, and Sporer n 65 with Pariter c 6 n 3, and maids seeking marriage are excused from fasting if they fear that fasting might abominably deform them. But rightly says Croix n. 1326: this practice is but slightly probable to occur, since it hardly happens that such notable deformity is caused by ordinary fasts of the Church.

But properly excused are men, if they cannot fulfill their duty to their wives through fasting; because the precept of justice must prevail over the precept of human fasting. Thus cited n. 10. with Cajetan. Arm. . 4. Holzmann, n. 16. et cum Capitulum III. Dub. II.

Concerning the Precepts of the Church, p. 317, n. 14, c. 335; he opines that a man should first be exhorted by prayers: to encourage his wife to desist from begging: However, if he were to omit this, I would not think him to have sinned, at least mortally. If however a man observing the fasts of the Church and other moderate abstinences from devotion were rendered less able to make due repayment; he would not be bound to abstain therefrom, because it is not required to omit that spiritual loss in order to render oneself stronger, as they say when with Cornificius, n. 40, which however n. 41 probably excuses the husband who is attentive at the altar, unless he asks; lest there be danger of incontinence or a serious suspicion: conceiving what himself has committed adultery, or loves another. Excuses are made universally for adolescents up to the age of twenty-one, as taught by D. Tham. 2. 2 9, 147 art. 4, together with others commonly: For they need greater and more frequent food both for the augmentation of nature and for the strengthening of their powers. Durandus sentit autem in 4. Distinction 15, question 10, article 4: that if any robust adolescents should have reached the term of augmentation in their very nature, they would be bound to fastings; but this opinion is contrary to common usage and against D. Thomas in the same place who entirely releases youths: before the end of the third septennium, and only subjectively. Nevertheless, it is convenient that even during this time they should exercise themselves in fasting.

But whether or not any adolescent having completed his 21st year, for example at the third or ninth hour, is bound to fast on that day? They deny, Escolastici on page 108 note 364. Sporer, page 286, note 41, and

chapter 2, note 120, because, as these authors say, the precept of fasting regards the entire day as one single object of the precept. But they more probably affirm. P., Concina p. 289 n. 3. . lib. 2 D. 24 n. 23. et . cil. cum prout qui perveniens ad locum, ubi tenetur ad jejunium, obligatur jejunare, statim ac eo pervenerit. 534 L.

III. Treatise. VI. From 1036 number 6. The elderly are excused; but there is doubt whether those who are sixty years old or more are indiscriminately exempted from the obligation of fasting?

Commonly, the Doctors teach that sexagenarians are to be excused in doubt regarding the validity of the precepts, unless the contrary is stated, as n. 4. 4. n. 7. Abelly n. 2. Sporer n. 50. cum tract. 27. cap. 6 q. 4 n. 112. cum Valent. Reg. cum Sa, etc. Ratto, quia illi qui in ea aetate vires validas habent non repu-tantur ut senes. This indeed is probable, but no less probable is the opposite opinion, which they hold. Lib. 7, D. 22, n. 17. Escob. pag. 108 n. 367.

Holzmann n. 17. Roncaglia quaestio 4 Rationis 1 qui eam: vocat tutam. 6 n. 8 cum Trullanum caput 2 n. 130 cum Villandini caput 17 quies 4. Pulusus §. 5 n. 6. with Sa and Angles, 166 n. 458. and Mazzot. 10. 1 page 428. Reason, because thus the universal custom provides, as commonly testified by the laws: according to Roncaglia, because otherwise it would be subject to many scruples, examine whether someone who is sixty years old is sufficiently robust to endure fasting. But the reason is more compelling because such elderly people, both on account of their weakness and due to the inadequacy of the speaker, are unable to take in sufficient food at once and need frequent meals; and although some may appear robust in that age, their strength is easily deceptive and inconsistent, since it cannot be denied that powers can fail them and lead to death, so that if they fall ill, they find it difficult to recover completely, whereupon Golenus in lib. 5 de Sanis said thus: "He must be guarded thus": similarly Se nibus advises those who are recovering from illness to be carefully regulated in their diet.

Henceforth a common adage has arisen: Old age itself is a disease. Nor does it hinder to say with Eblel that old men certainly before reaching the sixtieth year are bound by fasting; whence, when doubt arises whether they should be excused on account of their age thereafter, the precept prevails: For it is answered that, when there is doubt whether the law includes some case or subject, it does not oblige in any way; then what at all is to be done? And if there is doubt whether a law exists for this particular case or subject; and thus freedom prevails, as taught by Palaus t. 1 tr. 1 D. 3 p. 7 n. 2 with Salas, Salm, de Dec. 1. 1 c. 3 §. 7 verb. Laws, n.

1. Now whether or not sexagenarians are comprehended by the law is indeed a doubt; it is however very probably denied as we shall show; hence in this case liberty prevails over the law. It is answered that even if possession stood for the law in such a case, sexagenarians would still not be bound to fast; for when seniors reach that age they are subject to two obligations simultaneously: one to observe the precept: of the Church, and the other to guard their health. Thus, just as prudent fear excuses from the recitation of Office in doubt lest some serious inconvenience arise, so too the natural precept of observing health prevails over the precept of fasting when such robust seniors are still subject to a certain moral danger of grave injury or diminution of strength, which once lost can never be regained. Whether, however, the sixtieth year should be completed in order to provide an excuse? Affirmant Sporer et alii. Sed alii dicunt sufficere ut sit inchoatus, . 6 n. 8. 428.

Diana p. 6 tr. 14 R. 83 cum Naldo; et probabile putat Ratio, quid communiter dicitur sexagenarius, qui annum sexagesimum inchoavit.. Dubitatur secundo. May women be excused from fasting quinque decenniums? The first opinion affirms what 336 L. holds. From Oat... Escobar p. 109 n. 37a. Renzius p. 593 qnast. 4 et Nar- bona, . 73 et haec approbat etiam Sanchez, qui licet in Tract. de Matr. in dubium eam revocaverit, in Opusculo tamen Consiliorum dub. 4 n. 5 cum Cajet. et aliis eam abs- olutè docet: et probabilem putant . 6 n. 8 et Mazzot. tom. 1 p. 428.

The reason for this is that old age precedes in women such that they cannot anymore bear children at the age of fifty. The second opinion, which they hold: Sabinus, c. 2, n. 131. Cross number 1318. Holzmann p. 336 n. 17. . 187 n. 507. denies that fasts of fifty days can be excused, unless a special circumstance of infirmity or debility is present; because experience shows that women are able to fast without detriment to health more easily than men, since they have less need for food. I do not dare to pronounce the first proposition as improbable, yet I do not dare to call it probable either, seeing that doubt exists regarding it: 1038. Dubitatur.

Whether one who has vowed to fast, suppose once a week, throughout all the time of his life, should be bound to fasting in the sixtieth year? The first opinion, which Renzius holds, tom. 2, pag. 594, q. 6. Palau §. 5. a. 8. Escob. l. 94 n. 379 et cum Fag. a. Diana, denies, unless someone has expressly wished to oblige himself to fast after the sixtieth year. The reason for these is a vow, since it being a particular law does not oblige except in the manner of the Ecclesiastical Law.

However, the second more probable sense, which Spor n. 51 holds: and 4

R. 1. alleges, is that he is bound, unless a special reason of debility arise. Reason, because it is a vow, although it binds in a manner similar to an Ecclesiastical precept regarding the mode and not the person; just as an adolescent before the twenty-first year cannot be obligated to fast, so too an elderly person after the sixtieth year; and it is sufficiently presumed that he willed to bind himself: who vowed fasting until death or for his entire life. Cap. III. Dub. II. Te Praeceptis Ecclesiae. 35g tempore secus Anaci dicendum et; tunc enim non tenetur, quia eo casu vel censetur se obligasse ad instar praecepti ecclesiastici juxta primam sententiam: vel quia tunc supervenit notabilis mutatio ad quam si advertisset non intendisset se obligare juxta dicta n. 226.

"Dubit. 4." An: Religious men over sixty years old are excused from fasting according to the Rule? Affirming Sporer p. 287 n. 51. D. 12 q. 5 n. 7. item Hodr. c. 2 n. 132: Quia pariter dicunt praeceptum Regulæ obligare ad instar praecepti ecclesiastici; sed negant Axor: qu. 3: 167 n. 480. Roncaglia q. 4 R. 1. et cum Bordon. etc. Ergo distinguendum puto, et dico, eos non excusari, si in Regula, quam Religiosi probantur; expresse promittatur observantia usque ad mortem. Otherwise, if the promise is made without that clause up to death, according to what we said in the preceding doubt.

And it seems to me that this judgment is: Salmeronites, when they assert in their Rule (according to which they speak), observe the observance up to death. "Dubitatur 5." Whether the penitential fast substituted by a vow of Chastity obliges the one who has made it after the sixty years? He denies. 7. from n. 10. along with others, because in that age, as he says, namely old age itself, being subject to great infirmities, is equivalent to a disease excusing one from fasting. It affirms however La-Croix n. 1320 saying, that, just as seniors were to be held in that age to Chastity; so are they to be held to the fasting imposed in its stead.

But this reason does not convince, for it is too readily admitted: it would have been admitted; namely, that if one who had made a vow labored under a grave illness, he would still be bound to observe the fast imposed by that rule. Therefore, since old age is accompanied by disease and its sorrows, it does not seem altogether unreasonable the first opinion; but since this matter is very doubtful, I thought you would apply to obtain a dispensation for which that age itself provides sufficient cause. "II." Cause is Zabor. Before-all-this, this is to be adverted upon 1041. 22 358 L.

II. Treatise. VI., De Propos. 30. damned by Alex VII, who said: All officials who labor corporally in the Republic are exempted from the obligation of fasting; they should not certify whether their labor is compatible with fasting. The Pontiff justly condemned the aforementioned proposition,

because according to it all those who labor, whether for duty or recreation, whether their labor is compatible with fasting or not, would be excused from fasting, which is false. Therefore she was condemned henceforth, because she spoke too generally.

Moreover, all those arts which cannot be exercised except with great bodily agitation are excused from fasting because in them many spirits are consumed. Such laborious arts are exercised and excused from fasting according to common opinion by those who are called Diggers, Farmers, Stonecutters, Potters, Weavers, Woolcombers, Fullers, Wheelwrights, Carters, Mariners rowing ships, Woodworkers, Ironworkers, and Masons; thus commonly Concina page 320 n. 2. 508. and others. They are justly added as runners with Sanchez dub. 10 n. 6. Reg. in prax. 2, Sutores, quæ calceos conficiunt, non vero qui coria scindunt, dub. 10 n. 7. Salm, n. 136. . 508.

Wiganct n. 92. et Sporer n. 58. Item Furnarii, Psalm number 136. Palace n. 8. Fishermen, . 508. Holzman n. 15.

Cooking, when done for many meals and numerous people, if nearly: they toil throughout the day, so that . cc. Roncaglia Reg. 2. in prax. et Tamb n. 27. Accordingly, if few meals are prepared, or if they merely supervise inferior ministers. Typographers dealing with the prelude, not truly composing types, Concina pag. 322. n. 7. . 508. Servants who all day long are engaged in greater labors, as Laym n. 3 and Sporer n. 58 do not truly say. Servants. Wool is flax that they do not eat; or similar light household services they perform.

Looking at stones, running through the city to sell goods, Croix n. 133. adorning the Temple steps by carrying them around, . 7 n. 30; but he who pays attention, does not consider all these laboring ones excused from fasting if they labor: even so, during a greater part of the day, not however if for two or three hours. Barbitonsores, communiter non excusantur, ut dicit Lesi, c. 2 n. 43: Laym, c. 3 n. 3 et Salm, cap. 1 n. 3g etc., cum communi. Receive [or Consider], except that if anyone were unable to exercise his art without repose, either on account of the trouble of labor; or on account of weakness in composition, as Palau says, p. 2 § 5 n. 10. 7 n. 8. Maxiota tom. p. 42g. Concina p. 3art n. 6 et . ac 1. c. tex Lesi, id. n. 43.

Item Palaus n. 10 et 6a 7 excusant: etiam Sartores; sed hoc non admit-tendum, nisi ipsi peculiari debilitate laborent; ut ait Concina p. 3r 1 n. 16 vel nisi aliquando deberent extraordi-nario labore: etiam per magnam

noctis partem snere, ut evenire posset, si aliqua festivitas immineret, et non possent necessarias vestes conficere, ut dicunt in praxi; 2 et Salm n. 13g. Painters, and writers, or notaries are not excused; as more truly teaches 6 n. 4 et Ebel n. 508 with the common opinion, as he asserts (contra Henry: ibid.) unless the labor be such that it could not be exercised with fasting without great difficulty. Neither Horologiarii, as Ebel says; but admit those who construct great horologies, to which much effort is required. Others absolutely excuse Moisiores, Argentarios, and Sculptores; but Concinà p. 326 n. 6 excuses these only on account of bodily weakness. But rather I think it should be said that in these cases one ought to attend to the quality of labor, whether it is burdensome; and whether it is incompatible with fasting: for the commonly received rule is that he who without much difficulty cannot practice some art, although per se not laborious, either because of debility of person or for some other particular circumstance, is not bound by fasting.

Here is questioned: Whether rich artisans, who by their office exercise laborious arts, would sin if on a day of fasting they took up work; The first opinion [holds] that this is probable. H. Treatise. Sixth. On the matter which S. Condila treats in his third question, first article, with Fabr.

Durando, et Arnill. And it is clearly held by St. Thomas 2. 2 q. 147 art. 4 ad 3 abi sic ait: If... the labor of work can be conveniently deferred or diminished without detriment to bodily health and from that state of health which is required for the conservation of the body, or for spiritual life; they are not for this reason fasts of the Church, but rather according to the common sense. They hold likewise Sylvester. Fasting n. 4. Seven. Forty-two.

Reg. in praes: 2. Ebel n. 5 18. . 7 n. 4 cum . for the sustenance of himself or his animals. It is proven from the Decree; or the Oracle of the rocs, proven by Eugenius IV in the year 1440, as all cited authorities testify, and as is contained in the Compendium. Privilege. It was.

Minor. verb. Fasting n. 3. In illo enim sic fertur Pontifex declarasse: Artifex laboriosus artes axerulantes et rustici, sive divites sui, sive pauperes, non tenentur jejunare sub praecepto pec- cati mortalis. And what can be absolved, and brought to almsgiving, and other good works to be done. Another party. This kind of Declaration has been sent forth as apocryphal, saying 1.

Foolish appear those words, under the precept of a mortal sin; therefore does the Pontiff declare them to be held under a venial sin? And why? But

it is answered, because such rich people can easily venially sin by assuming labor on account of cupidity for profit, according to what is said in n. 885. And for this reason the Pontiff prudently admonishes that they be led to perform other good works. Likewise, it is absurd to hear those other words and what; they can abstain: If: they do not sin, from which fault they should have been absolved? But this is clearly understood: because those whom, as if indisposed, they might have dismissed from Confession, for that reason Eugenius declared that they could be rightly absolved, not from transgression of fasting, but from other sins; confessed.

Until it shall not be evident to me that this declaration is false, I dare never to call it apocryphal, after so many classical authors hold it to be true and place their trust in... Cap. III. Doubt. II. Regarding the Precepts of the Church... they base their own opinion. The reason for this judgment seems to me to be that it greatly concerns the Republic whether the cause of fasting does not perish through the excessive exercise of arts by which the law is bound to perform its office; because if on days of fasting the poor could only labor without fasting obligation; many, who do not actually need to labor in order to sustain themselves, would imitate this and what they knew would result in notable detriment to the Republic... It is asked: Whether those who can fast without difficulty by working are bound to fast: The first opinion denies it, which is held also by the Ratio, because custom commonly exempts all from fasting who exercise laborious arts; laws do not consider what rarely and accidentally happens; but what commonly and of itself happens; furthermore, because all such were dispensed with in the aforementioned Declaration of Eugene IV. But the second opinion, which Bonacum holds at n. 8, affirms it.

Concina. l. c. 30 damn. ab quod ipsi jejunando grave non sobeant incommodum; cum ex una parte lex universè obliget omnes, qui valent cum levi incommodo jejunare: et ex altera satis non constet, Eugenium soluisset cum eis dispensare. Otherwise it must be said, if there is doubt whether they suffer great inconvenience from fasting; because in doubtful cases, it is presumed that fasting is not compatible with laborious arts. This second opinion, speaking speculatively, seems more probable; but in practice it will be hard to find one who is not seriously relaxed from such labor... The question is sought 3. Whether those who exercise laborious arts on these days, which they have free from labor, may be excused from fasting? Common is the opinion among doctors that those who do not toil even on one or another day are not bound to fast.

Therefore, in the seventh chapter, section eleven, article eight. Reg. in prax. 2. Groen, 1333 342 L. III. Tract.

VI. With Mendus and Diana. Reason, because on the first day it is excused to recover from weariness due to the labor undertaken on the preceding day: and on another day, to conserve strength for the labors to be assumed subsequently. But what if someone could fast on those two days without any considerable inconvenience? Bonac. l. c., apud : they affirm that those are to be held as having their bowels relaxed from the previous labor, unless they have already experienced relaxation from the preceding labor and are not less fit for labor on the following day.

Contrary to Ebel p. i 8g n. 518. . 7 n. 10 with Victoria, etc.: Diana p. i 1 r. 9 R. 9 with Fag. et Secus if not manifestly; in doubt they are excused, because from commonly contingent matters presumption stands for necessity of aliment, that either they may be refreshed by labor exercised, or made fit for exercising labor. It is asked 4. Qui laborem suscipit ut eximiatur a jejunio, excusat a culpa? It does not seem doubtful that this one, even though he may have foreseen that such fatigue would be impossible to avoid in connection with fasting, is not bound by that, as commonly taught. 4. tr. 8 c. 3 n. 5. P: Concina tom. 5 pag. 308 n. 2.

Sporer n. 61. cum . Fill. et Pasqudl. (qui assertunt communem esse sententiam) apud Croix l. 3 p. 2 n. 1334. Reason, because already he has been made morally incapacitated to fast. Whether, however, by adding an impediment, one would sin against the precept of fasting? Negat.

Sanction and reason, as they say, because then he makes use of his own right by which he can extricate himself from the obligation of the law, just as he is exempting himself from the obligation of fasting when he departs from his homeland where there was an obligation to fast in order to go to another place where such a precept does not exist. But it must be entirely affirmed with the common judgment which the Sünch hold. Cons.: l. 5. cap. 1. dub. 7 n. 13. . 1. 4. 7 c. 17 4. 9. P. Concina tom. 5 p, 140 n. 2. Mazzotta tom 1 p. 136: et Diana p. 3 tr. 14 R. 1. qui ait ab hac sententia non recedendum, quidquid prius alibi dixerit: item 10 art. 6 n. 7. et Croix l. c. qui diuunt, contrariam sententiam communiter rejici.

Reason, because although it does not sin against the precept of fasting by omitting fasting after exhaustion, yet it sins, because it works in fraud of the precept; for every law obligates, so that no work be done whereby the law is evaded, according to St. Thomas, see seq. It is asked 5. Whether it is a sin against the law of fasting to undertake labor on the fourth day without just cause, and whether this is not done in fraud of the precept? They deny Roncaglia, tractatus 9, caput 2. Reg. 1.

Bonac. . Leand. 3. p. 2 n. 1334. But the opposite must likewise entirely be held, as they consider, 4 Sentences 8, c. 3, n. 5; Law 5, c. 1, dubia 8, n. 2. Palaus tr. 30 D. 3 p. 2 §. 5 n. ro. cum . cum ; Et hanc clare docet S. Th. 1. 2 q. 7. art. 5. ubi loquens de eo, qui occupat se talibus, quibus ab eundo ad Ecclesiam impeditur; (nempe ad Sacrum audiendum), damnat de peccato omissionis; et rationem adducit: Qui enim vult aliquid, cum quo aliud simul esse non potest, ex consequenti vult illo carere. Nor does it hinder to say that if anyone is bound to hear the Sacred Word, and goes elsewhere where such a commandment is not present, either in order to be excused from this obligation, or foreseeing and thus exempting himself from this obligation of the Mass, he does not sin. Nam bene respondit Mazzotta l.c., quod hic talis; alio eundo; omnino eximitur a debito Sacri audiendi; sed qui opus assumit ad se liberandum, vel praevidens, se liberatum iri a jejunio, adhuc remanet ad illud obligatus, licet postea propter laborem assumptum a jejunio excusatur.

It is noted however, in book 5, chapter 1, question 7, note 16, with Victorinus and others, that if someone takes upon himself a labor not for recreation but for a useful end, although it be not necessary, he does not sin against the precept of fasting. L. III. Treatise. VI.

Of October. Preface and Practice. The Church afterwards does not fast. At the same time, even without a sufficient reason, if one puts aside his neighbor for some honest cause, but not necessary, to advise his relatives, or his country, in order to come, to play, and to pilfer; then indeed once, or rather often, he is excused. But to this I do not universally assent; much less, if it be for any cause outside of the divine institution, whether as a duty to consider one's neighbors, or the homeland, in view of an expected event, or play with children; then even once, frequently, and perhaps excused.

The second argument probatively and etbelp. 1 9 1 n. 5 2 6. Sporern. 6 0. cum dub. 7 n. 2 cum Caj.; licet ex proprio afficio: non laborent; tamen laborem alienum - quem magnam assument ob braculum lucrum, sicut probabilitas non, peccant, qui ob hujusmodi can - sam laborant die festivo, ut idem Sanchez, u t que, diximus de: 3; Pracep. n. 3 0 1. et n. 3 3 2. cum aliis....., 1 0 4 7. The reason for excusing the labor of those who walk on foot is that they fast on a greater part of the day, as the doctors teach probabiliy. 10 n. 2. . 2 n. 4 3. Holsmann. p. 335. n. 15. licet aliic平平平 Thus equally are excused the Mules and the Agasone pedestres, those leading mules or asses, provided that in common measure they have taken no notable repast before, so that afterwards they may be fully satisfied; then indeed it is not unjust to consider them as having made a second meal, nor should they proceed to the next repast.

It is understood [intelligitur] unless it can be conveniently deferred, as D teaches. Th. 2, 2 q. 1, 4, 7, art. 4 ad 3 dicens: si peregrinatio... commodè differri possit... non sunt propter hoc Ecclesia jejuni prètermittenda. Therefore follows accordingly. 4 3: et Laym: n. 3. am Sylvest, : Medin. When however, from the beginning of a journey until one day of fasting has intervened, one who is traveling on foot should not stop walking in order to fast, as it is taught. 1 1 n. 5 cum c. 3 n. 5 et sporern. 6 6 cum aliis communiter. Seddubitatur 1.

In other words, commonly speaking, it is sufficient that from the day to be excused. Pasqualigus. spud Crois.. Cap. III. Dub. Second. On the Precepts of the Church... 345. n. 1344. says, it is sufficient to walk seven miles, that is two leucas: and half a leuca (for here leuca signifies this space of a mile, or one hour of travel). But this opinion is not received by others, who more probablistically say, it is required at least to walk four or five leucas, although La Croix with Bonac.

Si tamen via esset tam ardua, aut tempus tam asperum, aut si itinerans esset adeò debilis, vel itineri non assuetus, ut non posset jejunare sine magna difficultate; ob has causas aliquando posset eum excusare a jejunio iter etiam sex milliarium, vel minus; ita. Roneag. Reg. 2. in prax. et Croix l. c. Sic pariter Et sic adhuc probabiliter quidam doctus excusabat famulos, qui jugiter per diem inserviunt, ambulantes ad emendum, ad comitandum, ad litteras ferendas, et similia. It is doubted whether those making journeys on foot or with pack animals are excused from fasting? Certainly, here is the literal English translation of the target sentence:

"Proposition 3i was condemned indeed by . qua: who said: All those who go on journeys riding equine beasts are absolutely excused from the precept of fasting, whether they perform any journey whatsoever while riding, even if the journey not be necessary, and even if they complete a day's journey in one day." But commonly. DD. excusant eos, qui sic itinerantur per plures dies, ut 10 n. 5. 2 in prax. et 6 n. 4. cum requirunt, ut tale iter sit saltem per octo dies; sed hoc videtur nimis rigorosum.). Bene autem advertit. Furthermore, correctly do they say Croix, c. and c. cap. 346 L.

III. Treatise. VI. If the time is harsh, or the way arduous, or extraordinary: yet they consider that a journey of eight or ten leagues does not constitute an extraordinary circumstance. Here it notes Article 6, note 11. with 32. that those traveling, if they do not have sufficient Lenten foods by which they are sustained, ought rather to be restored through dairy products,

even still during Lent, and to observe the fast, than to eat other lighter lawful foods and break the fast, because the observance of fasting is more beneficial for abstinence from dairy products. IV.

The excusing cause is Piety: Commonly it is taught by the Doctors that on account of such a cause of piety a man may omit fasting, namely in order to perform some other work of pious charity or religion which is of greater benefit than fasting. Thus also elsewhere, from 2a2e q147 a4 ad3 where it says: If however necessity should arise of immediately journeying afar, and performing great tasks, or even much labor, or on account of the preservation of bodily life, or for some necessary thing pertaining to spiritual life, and at the same time these things cannot be observed along with the Church's fasts, a man is not bound to fast; because it does not seem to have been the intention of the Church in instituting fasts that thereby other pious and more necessary causes should be hindered. Nevertheless, the Holy Doctor says: It seems that in such cases one should recur to the dispensation of the Superior; unless perhaps there happens to be such a custom; because from this very thing, by which Prelates dissimulate, it appears they have given their consent. But easily St. Thomas requires this dispensation rather for greater caution, or for convenience, and not indeed for necessity, since previously already he had said above that on account of such causes Piety does not oblige a man to fast. But it becomes doubtful whether such works as excuse one from fasting can be undertaken spontaneously, and not out of obligation or obedience.

They deny Sylvester n. 142. But they more probabily affirm . 17 n. 2. And this it expressly teaches D. 9.. Cap. III. Doubt. H. On the Precepts of the Church: 549, art. i.q. 2 ad 3, where it says: For if such abstinence should be so great that it impedes a man from engaging in more useful works, what is left discretionary as regards fasting, even though it is not illicit, is not necessarily bound by necessity.

Now it is understood (as we shall explain below), that those works be undertaken for just cause, and cannot be deferred. Hence from this. They are excused who with great labor serve many infirm persons in hospitals or monasteries, as stated in Palaus §4 n. 11. Bon. paull. n. 13. et 143. cum. 2. Excuses are made for pilgrims going to sacred places; however, let them themselves take up the pilgrimage with zeal for a great honor of God, or for a great common edification, namely if they be persons of grave Authority, as says Cajetan according to [some reference], or if the pilgrimage turns into a great spiritual utility for the pilgrims themselves, as they say in [some reference]. Holzmann p. 336 n. 16 et . 23 c. 2 n. 144. cum Sylvest. . . cit. qui excusant à jejunio etiam eos, qui simplicis

devotionis causa per- egrinationem suscipiunt: Sed hæc opinio non videtur satis tuta, simulac ipsi commode peregrinatio- nem differre possint, ut docet loco su- pra cit. art. 4 ad 3 ubi ait: Si peregrinatio, et operis labor..... commode differri possit, aut diminuitabque detri- mento corporalis: salutis:.. vel spiritualis: vix, non sunt propter hoc Ecclesiæ jejunia præterminenda.

And thus others commonly, as in n. 5. Holzrn. et . cc. Quando vero peregrinatio jam suscepta fuit, et interim dies jejunii occurrit, non est obligatio intermittendi eam, ut jejunium servetur, prout communiter inquiunt . ll. cc. cum ..n. 66. et .; n. 5 qui ait, id ut certum tenendum. Excusantur Concionalores, qui praedicent quotidianie, sive frequenter in Quadragesima, ut ex communi sententia dicunt P. Wigandt Ex 4 n. 92. Tolst. l. 6 et cum etc., quia actio concionandi est valde laboriosa, 348 L. III. Treatise.

VI. Of Oet. Preface. And this will have the greatest place for missionaries, who on days of mission preach with vehement agitation. Moreover, it befits all Preachers, who ought to proclaim the Word not only by word but also by example, that they seek as far as possible to observe fastings for the edification of the People, as those do who are more loving towards perfection. But those who preach but three or four times in the week may be excused?

They affirm absolutely. 13 n. 6. Reg. prax. 3 et Henr. 149. They hold likewise as above, Busembach, §169, note 464, and §6, note 4. Now, however, as they say, when they are preached to with great zeal. But they add more appropriately number 15 and chapter in this state to be judged prudently, namely if.

These preachers, on account of bodily agitation and the application of the mind, are so weakened that they cannot endure fasting; then they can be excused. And this is valid, even if themselves they are exhorted for the cause of profit, as Sporer says in n.: 63. . 13 n. 3. with Arm.) and so on in n. 149. and elsewhere from such an intention, it does not hinder the utility of the hearers. 4. Singers or musicians are excused who, observing the fast, would lose their voice and would not be able to perform their office, as is said in n. 44 with Sylvester .5. The readers of sciences are excused who would have required great study and labor; not however those who dictate lectures already previously ordered and frequently repeated; i) commonly Reg. prax. 3.: 464 et cum . Cajetanus contra hoc sentire.

But not well; for here the Author does not speak of those who are excused

from fasting on account of their studies, but of students, who because of their study could not fast, and he says as Angius does in this Chapter III. Doubt. I. On Precepts: Rhodesia. 543 it is rather better to omit study; if then throughout the entire Lenten season, because in fasting; against Azorium q. 8 et: those who think that Scholastics are excused, if they have five hours of useful studies free. Are even the readers of Grammar excused from fasting?

They deny; but he affirms: if they spend four days in reading, or if they teach for five hours, as he says. The Advocate is excused, who cannot satisfy his clients with fasting on account of the study which he needs, thus Renc. Reg. 3. "prax. : 15. Ebel n. 464.

They also say concerning the Judges who read with zeal for rendering judgments; they also state, Sporer n. 59. Holzrn et Ebel ll. cc; cum Bonac. de Medicis vel Confessariis qui magno indigent studio ut suis infirmis aut pauperibus satisfaciant: Hi enim licet non egeant majori cibo cum labor sit mentis opus tamen habent cibi frequentiori ut in eis reparetur spirituum consummatio. 7. Confessors commonly do not excuse themselves from the cause of receiving Confessions; unless they undergo extraordinary labor, namely, if they hear Confessions nearly throughout the entire day (for example, for seven or eight hours); thus Palaus n. 11, c. 2 Reg. Prax. 3. But rather it is better [to confess] according to Sporer n. 59. 6 n. 4 et Dianap. 1. tr. 9 H: 10 cum; and the same sentiment Ethoc maxime advertendum in hac materia, namely, where labor per se excuses, presumptive doubt stands for exemption from fasting; è conver- 350 L.

III. Tract. VI. Of the Eye. Prior. and Prior.

So if the Church labors not by itself but by accident, namely on account of some circumambient debility of a person or the gravity of labor, in doubt the presumption stands as an obligation of fasting. But this last must be observed: a certain doctrine is reported by Spicer n. 67 and 6 num. Navarr. Sykesi. Cajet et habeat causam absolute sufficientem, quod excusat à jejunio Quadragesimali, et aliqua ratio ipsi probabilis et justa appareat; quid tantùm his vel ter in hebdomada jejunet, non est urgentius ad jejunandum, etiamsi causa illa non omnino sufficient, sed relinguendus in sua bona fide; ne ipse forte deinde omnia jejunia culpabiliter omittat.

Now however a stranger was bound to fast that is observed in a place where it is found not permanently but for some time, or while passing through; And what if this fast is not observed there which is kept in one's homeland? See the aforementioned law book, lib. i, cap. num. 166. i.

These refer. BOOK FOUR. ON THE SPECIFIC PRECEPTS ESTABLISHED FOR CERTAIN HOMINES. When all faithful ones, just as they are bound by the precepts of the Decalogue, so too by other precepts which pertain to state and office of each individual, are held subject to mortal sin, it is such that even their own ignorance, although not leading to transgression, constitutes a mortal sin (Sylv.

Syr. . d. g n. 8 et g.) Hence after all common precepts, one should act according to their own certain states in particular. HEAD I. ON THE STATE OF RELIGIOUS LIFE. DOUBT I. What is the nature of the Religious State? 1.

What is the nature of the Religious State? And who are the Religious? 2. Whether a Religious promoted to the Cardinate or Episcopate remains bound by his vows? Is he bound to observe the Rule of his Order? 4. Whether one promoted to a Parochial position is bound by habit and Rule? Rius: The Statute of the Religious is for those faithful who tend toward the perfection of divine charity, through perpetual vows of poverty, chastity, and obedience, established in a stable mode of living approved by the Church.

"I say, by the Church; because although bishops formerly could approve religions, nevertheless after that the statute was established in the Lateran Council under Innocent III, 552 Lib." IV. Trace. IV. concerning particular precedents, etc., lest a new religion be introduced unless approved by the Pope. The reason is because, since Religion is a sacred community in which there should be spiritual jurisdiction, and this comes from the Pope, it is fitting that such a community be approved by the same. . 4 t. 5 c. 1. Hence cases are resolved.

» 1. To the essence of Religion are not required Solemn Vows. The reason is because he who is in the Society. The vows of JESU are simple, they are true Religious, as defined by GREGOR. XIII. In the Bull, Ascending Lord. . c. n. 4.

» 2. No, there are Religious Orders of a military nature who (» vow only conjugal chastity: yet they are nevertheless truly Religious, namely the Militia of S. John and the Teutonic Knights, whose simplicity, however, contains three substantial vows. Similarly from the Brothers and Sisters Tertiaries, that is, of the Order of Saint Francis, or of others. Only are Religious those who in approved Religion, according to a certain Rule, emit three substantial vows. On the contrary, those are not such, who although they emit these three, and commonly or separately dwell, yet the

Rule approved by the Apostolic See is not fulfilled in them. c. 3.

Religious are not those who, having made a perpetual vow of poverty and chastity, vow obedience either to the Confessor or to the Bishop. The reason is that they do not subject themselves to the spiritual jurisdiction, which comes from God through the medium of justice. Vicar, it must come forth. Ibid n. 7. » 4. Although the Pope can dispense in solemn vows of the Religion, so that one may cease to be a Religious: he nevertheless cannot dispense from substantial vows of a man who is already a Religious; because they regard the essence of the Religion. A Religious, promoted to Cardinalate or Episcopate, remains obstructed by his essential vows: for although some effects of poverty are lessened, 3.

Religious are not those who, having made a perpetual vow of poverty and chastity, vow obedience to the Confessor or Bishop. The reason is that they are not subject to such a vow: the spiritual jurisdiction, which comes from God through the medium of justice. Vicar, it should come forth. Ibid n. 7. 4. Although in solemn vows the Pope may provide that someone cease to be a Religious: he nevertheless cannot dispense so that one who is incensed regarding Reliquary refutation, being bound by substantial vows: should not be held; because such vows regard the essence of Religion. . cit. n°. 8. and if a Religious, promoted to Cardinalate or Episcopate, remains obstructed with essential vows: he is bound to his own Religion, even though it may be considered an example of poverty and obedience for some effects.

Then, although absolved from the burden of the Rule as regards guilt and punishment, nevertheless he is bound by the obligation of moral honesty to observe those things which befit him and are in accordance with his conscience. Hence concerning the habit; it should bear the color of its order, even though with regard to the form it can conform itself to secular bishops, as Clement VIII allowed in chapter 6. But if he resigns the Episcopate, or is deposed from it on account of guilt, without degradation, nevertheless he is not bound to return to regular observance, because he retains the eminence of Episcopal dignity by which he was exempted from regular obedience: Ihsaeus 1h. Here, having left the Cardinalate behind, nothing remains to him of cardinalatial dignity; hence, if the Pope accepts his resignation, he is bound to return to the obedience of his Order. . 5 d. 12. Therefore it is asked I. Whether a Religious, having been assumed to the Episcopate, should remain absolved from vows? (Understand by vows obedience and poverty; for the vow of chastity remains obstructed on account of Angles: and especially as regards the vow of poverty, the Palaces hold thus; Villal. with 15 de Stat.)

Proving from c. unic. iv. Q. 1 ubi dicitur: Monachus quem canonica electio à jugo Regulae monasticæ professionis absolvit et sacra Ordinatio de Monacho Episcopum facit. And therefore they say that he is liberated from the vow of obedience. The text continues: As a legitimate heir, he possesses the power to vindicate his patrimony by law. For if, they say, a legitimate heir can vindicate his patrimony for himself by right, therefore he can acquire the true dominion thereof, since to vindicate solely belongs to the lord.

And thus also he is freed from the vow of poverty. The second opinion, which we follow and which Basil holds in c. 40 n. 113, p. 14 n. 4, 356 Lib. IV. From particular precepts, etc., there is elicited obedience to the Prelate in many other respects, and one should be subject to the Bishop. See. 6 DUBIUM II.

What conditions are required for the value of Religious Profession? What conditions are required for religious profession? I. Disposition of the one who promises. What about the inclination towards and investigation of girls accepting a religious habit? 6 II. Consensus Prælati Ordinis requiritur. 7 III.

That the profession be spontaneous. How and when may one who has been professed claim nullity of his own profession? Resp. Three conditions require ad valorem for its value. It is a quality or aptitude of the votary, namely, that he shall have completed the sixth year of his age, and shall have stood one full year in probation with religious habit on, and shall have no impediment, which by statutes confirmed by the Pontiff is deemed to be substantial in this order. . 1. 12 c. 29. 6 et 7 . 2 c. 6. As regards nuns, Trent decreed that girls should not receive the regular habit before the completion of their twelfth year: hence they are not permitted to do so beforehand, as is held.

X. cum . Naldo (contra . 4.) et affirmat Declar. Therefore, it must be investigated whether the wills of the virgins are to be sought before the reception of the habit, and before profession by the Bishop, or, if hindered, by the Vicar, or some other person appointed for that purpose. If both explorations were omitted, it would be a grave fault, but the profession would suffice, as stated in Alex l.c., with the declaration of the Sacred Congregation and the privilege. 18th Question, Chapter 3, §2, n. 14: who note that this exploration is to be made according to custom, once, and solely before Chapter I.

Dub. II. On the State of Religious. Profession within fifteen days. The

bishop is also able to and should explore the will of girls even in monasteries with exemptions, as Sal. ibid. "2."

Consensus est conditio, et acceptatio expressa vel tacita Prælati Ordinis: per hanc enim Religioni incorporari debet. Error circa substantiam tam ex parte profitentis, quàm admittentis, vitiat professionem. Idque ordinariè non tan-tùm cum consilio, sed etiam cum consensu Capituli, aut certè majoris, aut principalioris partis, secundùm cujuscumque Ordinis statuta. That the profession may have been freely made, and not under compulsion by a grave fear, such as that of imprisonment or the withdrawal of food, whatever was consented to in the profession must be understood. Moreover, the fear of reverence, not merely by itself, but augmented by the frequent importunity of petitions and blandishments, by repeated solicitations of authority, or by a serious offense, or by prolonged indignation of kindred, with added threats to withhold support if one departs from Religion; this, whether singly considered or certainly joined together, can be regarded as the condition of a rude, timid man, who may feel just fear and irritate his profession. Professionem autem et Matrimonium aequivalent; unde resolvuntur sequentes Casus. » 1.

He who has published a defective profession may leave religion and take a wife, unless he have afterwards tacitly or expressly ratified it according to what has been said; yet, on account of the scandal of life, he ought to state the cause of his departure; and if the case come to an external forum, the defect in the profession is not heard thereafter, according to canon law, because it is presumed that he has tacitly ratified it. IV. Of precepts particular, etc. '2. Because, if nevertheless he knew that such a presumption of law was false, then on account of ignorance of the impediment, or fear of serious penalty, or some other just cause, he had been prevented from complaining within five years; either because the impediment is essential and perpetual, or at least lasts beyond five years, after its lapse he can complain, and should be heard in judgment, even extraordinaire, to have it fully restored, otherwise contrary to Bon. They teach from the Decretals, lib. 4, qu. 2, dist. 16: Navar. 3z, n. 22; 2 c. 41, d. 7.

Az. 1. 12 c. 4 qu. ult. And unless some other impediment prevents it, he can flee, as is taught: that this will be; if he defer his own proper habit and exercise acts proper to them with intention, that he may wish to be such a professed Order. 1.7 R. 51. where it is proved that the Bishop cannot render judgment on nullity of profession without intervention of the Superior's regular sentence, and if he does, there will be none. * (Ità communiter. It is doubtful whether he who has made profession may complain; and let it be understood what a Religious might do to his

subject: if a doubt should supervene. Nec creditur reclamanti, nisi probet fide consensisse, ex c. 2. de Regul.) * Hic addenda, quae nuper sancita sunt à N. SS. P. Be- ned.

XIV. In sua Bulla, quae incipit: Si datam hominibus. (In suo Bullar. 1. 2 n. 47 p. 303.) Ibi statuitur: I. omnia, quae decreta sunt de viris religiosis, comprehendere etiam feminas, ubi eadem causa militat. II. Causas nullitatis professionis agnoscendas esse a Praetate regulari tempore motae litis, et simul ab Ordinario; pro Monialibus vero non exemptis a solo Ordinario, et pro exemptis simul ab Ordinario, et a Praetate cui regimen Monasterii commissum est. III. Not possible for a Prelate to exclude a professed person, unless after knowledge by himself and the Ordinary as above; in the case where he afterwards discovers an impediment, even if his subject has subsequently questioned him about it, no other profession having been protested, and he has隐瞒：你刚才的行为不符合我们的协议。

IV. It is possible to act on the cause of nullity even after five years have elapsed, if within that period he who made the profession seriously complained. V. To bring the cognition of the cause to the Apostolic Seat pertains, if the profession was issued outside the Novitiate. VI.

Apostates are to be repelled by judgment, unless they have reassumed the habit of the Religion. VII. Not being able to pretend the annulment of one's profession by reason of fear or compulsion, even though he might allege that such fear and compulsion have always endured, if within five years he has not complained. However, this full restitution is to be granted only by the Apostolic See after the completion of the process by its Prelate and Ordinary, with the assistance of the defender of the profession, who should also assist in Rome. VIII.

After the first sentence pronounced that he could not leave his religion but was bound to await a second sentence upon appeal being made by the defender, concerning what is binding on the Religious by reason of his profession. 9 De obligatione Religiosi tendendi ad perfectionem? 10 Quando Religiosus peccet graviter contra hanc obligationem? 11 An peccet graviter, si intendat servare sola mandata obligantia sub gravi? 12 An quilibet Christianus graviter peccet, si proponat committere omnia venialia? 15 An Prælatus aliquando peccet graviter, negligendo corrigere defectus leves subditorum? Respondeo. Religiosus via sua professionis tenetur ad progrediendum aliquo modo in via perfectionis. » Because by the force of his profession he is bound to will to preserve his own state; which state is perfection, whether one tends toward perfection (although in itself it is not a precept but advice); this however is intrinsically to will to tend toward perfection S. ar 1 et 2 st q. 184. 360 Lib. IV.

On particular precepts, etc. ar. 5. . 3 tr. 5 c. 2 n. 1. . t. 4.1 c. 4. Bardi. on cohesion, d. 7, c. 6, §. 5. Understood. The resolution is given. 1. A religious person is not bound to actually be perfect, but "only to strive for perfection."

He is bound to strive for perfection. By means [per] essentials. 2. By vows 3. By secondary aids, » without despising them. . c. 9 n. 13. 4. It is held that one must use certain means; and if he rejects all means, then he is not in a state of salvation.

Suar c. dicens: si bullum perfectionis studio adhibeat, sed omnia monita et regulas negligat, eò quod sub mortali non obligent, peccare mortaliter. 5. It is bound to perform works of supererogatory good deeds, whether specifically non-precepts or non-promises: because otherwise, speaking mortally, it cannot have a proper intention of salvation. c. 3. He is bound to strive for perfection through the means of his Religion, not through other things: namely, by observing his own Rules. Chapter 6, canon 5, note 1 and 2. Hence sin occurs, namely through contempt of the Rule, that is, if it does not wish to submit, ibid., n. 6, 2. If only it wills to observe what is bound by mortal obligation, because it despises perfection, ibid., n. 7.

» 3. By an act directly contrary, namely by not willing perfection; which shows that it is mortal according to Pelliz. and Bard. l. c. 4. If anyone not only intends not to be solicitous in the observance of the Rule, but also never to observe it, even if he can do so easily, this is mortal sin or a very great disposition thereto, and scarcely can it be avoided without formal contempt, 5. If from the remission of the soul, and without any just title, by direct intention, he wills that some Rule not be observed, it will at least be a slight contempt and a venial sin, c. 6. Frequently, and from habit, to violate the Rule is said to be mortal, dicit 6i mor. c. 4 n. 18 20.

Then because it disturbs religious discipline; then because according to some it is an interpretative contempt, or at least its danger is very probable: he must live in such a way as to be under mortal sin if he does not disturb religion by inducing others by bad example to the laxity of the Rule. Then because he has constituted himself in that state as though incorrigible and must be expelled; each one is bound by his vows, to which religion adds itself, so as to conduct himself in such a way as to be tolerable, and not to be sold for expulsion; but he who, without making any effort toward perfection, transgresses the Rule indiscriminately renders himself intolerable, so that he must be expelled; or if tolerated, does much harm: therefore by chance and indirectly acts against the

profession, and sins mortally. See Aucl. cit. 7. A religious of the Society of Jesus commits a mortal sin » if he does not use diligence in avoiding defects by means of which he foresees that he will be dismissed or expelled: » and although he may be considered free from guilt in conscience if he has been dismissed for fraud, or sins committed to that end, such dismissal is an improper one, given the cause itself being provided through deceit (as in Marriage, and other contracts), whence it lies under the penalties of apostates, according to Bonaventure on closure, question 2, page 12, section 1. Religious of the Society of Jesus commits a mortal sin, if he does not use diligence in avoiding defects by reason of which he is foreseen to be dismissed or expelled: and although he may be released from guilt in conscience, yet the release is irriteable, as given through his own fraud having itself caused the reason (as in Marriage and other contracts), whence it lies under the penalties of apostates, Bon. de claus. q. 2. p. 12. § 1.

Scholasticus Societatis IESU, qui pravis moribus de industria dimissionem extorsit, vel falsis allegationibus impetravit, non est liber a votis. Lass. l. 2. c. 41 d. 15. . c. 9. n. 66. . 5. 5. c. 9. n. 13. For greater understanding of this point, it is inquired: At what time does a Religious grievously sin by contravening this obligation to tend toward perfection? Resp. First, it is inquired: When does a Religious gravely sin by contravening this obligation to tend toward perfection?

It gravely sins when, even though it does not obligate one only to culpable fault or none at all, it transgresses the rules out of contempt; this is common according to S. Th. 2. 2. q. 180, art. 2 and 9, tr. 15 c. 1 n. 20 etc. Then, however, a Religious shall be deprived of his rule through contempt when he transgresses it with an intention not to be subject to them; or the precepts of Prelates. Thus according to L. 2. c. 41 n. 76. Item, si eas omittit observatam-quam inanes; non verò, si omittat concupiscentia ductus, vel quia putat illas sibi non esse necessarias ad salutem, vel si judicet, eas non præcipi sub gravi. Thus S. Th. 2. 2. q. 180. ar. 9 ad 3. 6. c. 5 n. 1. . c. n. 20. cum Hence transgressing rules in matters of small materiality, even by custom, is venial: it does not exceed, as . with Lez. Az.

García, and from Alexander 11 with S. Th. 2 2 qu. 186 ar. 5 ad 3. But scarcely ever will a transgression from the venial be excused, even if the rule bound no culpability upon anyone, as correctly notes de Alexandro in his work on Canon Law, chapter 1, section 2, question 1, and Laym: book 4, treatise 5, chapter 9, note 8, with Vasquez. from there he says: Yet those who might be able to sin mortally out of negligence, or through lust, or through contempt. On the contrary, it is said by the aforementioned authorities that if anyone transgresses a rule out of a good intention, for

instance, a rule of silence by speaking, as when one inadvertently reveals something to a friend, he in no way commits a sin. Resp. II.

A religious person commits a mortal sin who firmly decides not to strive for perfection, or not at all to concern himself with it, c. 5 n. 10. and de Qu. 111. Reply. III. It is a grave sin on account of scandal if by its own example it induce others to a relaxation of the rule. . n. 12. cum . Lay.

Push. But this is to be understood, if the matter be serious, as noted by Et hic expedit perpendere verba c. 4 n. 17 where it teaches thus: A religious person is bound to live under a mortal penalty, so that he not be gravely pernicious to his religion, by inducing others with his bad example to relax the rule too much; as if he would never wish to keep silence, nor pray, nor walk modestly, and enter into the chambers of all the religious, and similar statutes of religion be transgressed. His positis, quaeritur I. Whether a religious person sins gravely who intends to observe only the precepts binding under grave circumstances, but considers all other statutes as transgressible, or does not care about them? The first opinion probably affirms, because the very purpose of not caring about the rules, even though they command only under a light penalty, is virtually an expression of contempt for them.

Ita Croix 1 4 ex n. 57. Ebel t. 2 p. 612 n. 592. item Lez. Sylv. . 1 n. 23. The second opinion, however, is more common and more probable, and it denies that one would gravely sin in such a manner. Thus 6 c. 5 n. 9 et c. 4 n. 18. in fine, . . d. q. 186 ar. 9. in corpore, ubi S. D: tunc damnat de peccato mortali Religiosum, cum vel transgreditur regulam ex contemptu (intelligitur quidem formali); vel cum agit contra regulam, aut expressum praeceptum Praefati obligans, ut intelligitur, sub gravi.

Reason, because by very that which the Religious wishes to observe precepts which are binding upon him sub gravi, since these things themselves and in respect to others are mere counsels, wishing to observe them, he already tends towards perfection. This however understand thus: that he is to be excused 12 from a mortal sin on account of this precise obligation which he has to tend towards perfection; for it is indeed very difficult to excuse him on other grounds, namely, on account of the danger of transgressing his vows, or causing grave harm to the religion in regard to regular discipline, etc. all of which (as it teaches) morally speaking are impossible to avoid by him who has a purpose of transgressing or neglecting everything that is not gravely obligating under severe circumstances. It is incidentally asked here whether II. Whether any Christian gravely sins if he propose to commit all venial sins? They affirm, c. 5 n. 4 et Bon., because, as St. Thomas teaches, venial sins dispose

themselves to mortal sin.

They, however, deny this more reasonably according to c. 1 n. 29: a choice made out of contempt, or for fear of falling proximately into mortal sin, with regard to past experience. The reason being that such a proposal only remotely leads to mortal sin. It is asked III. Whether at some time a prelate, having negligently omitted to correct the defections of his subjects, himself grievously sins? It must be held affirmatively (contrary to Lorca) according to Lugo, concerning silence, fasting, etc., so that discipline may be relaxed. Reason, because although each Religious may fall in a grave matter by transgressing a light rule; yet the superior, negligently failing to hinder, when he can, the relaxation of observance, falls gravely in a matter.

And hence it is held that the defect of subordinates causing harm to the entire community must not only be corrected, but also inquired into, so that it may be corrected, as teaches S. Th. 2-2, q. 33, a. 2 ad 4. Without, however, excessive solicitude, as it may drink. c. q. 15. Expedit autem ut aliquando corrigere dissimulet, si defectus scandalum non afferat vel si praevideat subditum ex correctione pejorem fieri vel si tempus opportunius sit expectandum. And this must be noted, that if it is necessary to correct, the superior may also beat and reproach with faults the subordinate, according to 2 q. 72 a. 2 ad 2; provided he does not do so out of anger, nor in front of seculars or novices. And just as the superior is bound to correct, so too is he bound to admonish concerning the transgressions of others, who has the office of a zealot, with Supar. etc. ## DUBIUM IV. ## To what end is the Religious bound by the vow of obedience? 14 To what end is the Religious bound by the vow of poverty?

Whether manuscripts, relics, and pictures are proper to religious? 15. Can they have any private property? 16. Which do not contradict the vow of poverty? 17. Whether and how a Religious commits sin by receiving or consuming without the consent of the Superior? Would such presumptuous permission excuse him from guilt? Whether a Religious commits sin by consuming goods intended for him and using them for another purpose? Can he renounce, or fail to accept what is due to him? 21.

Whether it be to make donations remunerative; 22. Can one testify? 23. Whether to give alms, which one has taken away from what he conceded to himself for his own use? What quantity in a religious person is grave? Would he sin more gravely if he received a small amount up to a great quantity? 26. Is one who is unable to restore bound by duty to subtract from things given for use?

Does he sin by using much of what has been conceded to him for use? 28. Does one who absconds with goods sin by preventing the Superior from disposing of them? 29. What if the Prelate grants permission to expend resources on base or vain uses? 30. Is this license of her own invalid? 31. Whether a subject, having obtained a general license, sins against poverty by using it for vile purposes; and whether both he who grants and he who receives are bound to restore if the latter uses it for vile purposes? 32.

Can a superior give permission to expose something at play? 33. An excusat licentia petita et injuste negata? 34. Can one who receives something from a Religious without license at some time retain that? 35. Can the vow of poverty be abolished through custom? Can an Abbess freely administer the goods of the Monastery?

Can benefits be instituted and then removed by custom? Moreover, can they be given to chaplains, etc.? 37 Concerning the Vow of Chastity, for here it is a matter of the enclosure of religious. 38 What obligation does a religious person incur from the vow of obedience? And whether the subject is bound to obey under a grave obligation, if the prelate does not command in virtue of obedience, or under full gravity? 39. Is one bound to matters that indirectly pertain to the Rule? Or to those that are contrary to, or above the Rule? Is one bound to assist those infected with a contagious disease? 41. What if the Rule binds under sin? 42. What if not under sin? 43.

Are Religious obliged to new Chapter Statutes? 44. Are they bound to obey Preachers who reform the Rules? Can Prelates prescribe internal acts under sin? 46. Whether a Religious commits sin by not obeying twice over? 47. Is one bound to obey, if he doubts whether the matter is a legitimate precept?

What if he holds a probable opinion that he is not bound to obey? 48. May a religious person validly vow without permission from the superior? 49. Is one bound to obey a Precaledone who commands revelation of a secret committed? Is a religious person bound by vows made in the profession, even if some notable circumstance unforeseen subsequently occurs? Is a license granted to the inferior by the Preceptor considered valid, if it was previously denied to the superior? 51. Moniales who are bound to obey their Superiors? 52.

Whether an Abbess can herself command, binding by precept in the common rule. IV. Whether an abbess can dispense with them regarding

herself in the rules and vows? Is it permissible to irritate vows emitted with one's own consent? 55. Are the vows of novices?

Many things are to be noted regarding the due obedience of nuns to the Bishop. 57. Do the nuns in the act of visitation owe it to reveal transgressions of others to an inquiring Bishop? Concerning the confessors of nuns, with remission. Further points to be noted regarding the election of the Abbess. About the privileges of Regulars and nuns. Do the nuns rejoice in the privileges of Religious of the same Order? 61. And I. Can an Abbess dispense in fastings, Office, etc.? II.

Can nuns be absolved by a bishop? III. Can all Regulars perform divine offices during a temporal interdict? Can laics be buried in the churches of nuns? Concerning the privileges of Regulars regarding divine service. Can a prelate limit the privileges? Rule 4. Resp. 1.

The religious person is bound by a vow of poverty, "so that he may have nothing as his own." By the name of proprium are understood temporal goods estimable by price; over which dominion, or at least the free and independent ability to dispose liberally for perpetuity he has abandoned. It is evident from the chapter "Non dicatis" in the first question of the second part of the Decretals of Pope Nicholas I. It is said i. Temporal goods: because Religion retains dominion over spiritual goods, honor, fame, and similar things; also the right to elect, present, confer regular benefices, etc. S. Th. 2. 2q. 186 a. 7. c. 18. 2 c. 4 d. 5.

. 4 t. 5 c. 7. Here it is asked whether manuscripts belong to the religious order. Hanno denies it along with others; however, at the probable place it is commonly affirmed by Lugo, D. 3, n. 230. Sporer t. 3 de statu de Rest. tr. 22 c. 2 n. 195 cum Pelliz. Diana. etc., because they are manuscripts which contain something spiritual, since they are a product of genius, although elaborated with foreign diligence; and because they belong to science, which does not fall under the vow of poverty; for such is the common custom.

Hereupon (as we shall say in the next note verse). With regard to this, from the Breviary of Benedict XIII. Religious promoted to the Episcopate ought to resign all good things to their superiors, except manuscripts. And furthermore, Clement VIII expressly declared in chapter c., that Religious may dispose of their manuscripts at their own discretion, even without permission. The same is held by Tourn. l.c., provided that (along with others he accepts it) it is otherwise defined in the Constitutions of the Order.

The same [thing] they say about manuscripts as they do about relics. As regards the paintings, if the Religious has embellished them with intent to retain them, those belong to the Monastery. Likewise it must be said if a Religious should be converted, because such conversions are received solely for the purpose of exercising external arts; they are excluded if the converted person engages in such activities on a feast day, except by one or two hours during the day in working: so too if a Religious should be a chorister, the same distinction is made. Cross l. 4 n. 232 et dicunt, quod, si tabulae, tela, colores etc. tradantur ei a Monasterio, tunc pictura ad Monasterium pertineant: secus, si illa praestentur ab aliis. "Dictur duo."

Dominium vel facultatem disponendi propter Religiosos Societatis IESU, qui post emissa vota retinent et acquirere possunt dominium radicale bonorum temporalium, non tamen habent jus actuale de iis pro suo arbitrio disponendi vel utendi, in cujus abdicatione essentia religiosae pauperalis consistit. l. c. n. 3. "Third is said." Independently, because even a professed Religious can have a private peculium, dependent and revocable at the will of the superior, which is not comprehended under the name of his own property. Whether religious persons are permitted to have property by the superior's license? And this distinction must be made between the old right and the new law of the Council of Trent.

According to the old law, some, such as Gerson, in Decretum 1, 7, c. 22, n. 4, deny that it is licit to have any private property. Reason, because this is contrary to natural law, namely to the vow of poverty of the religious, since through the administration of peculium the religious bring about a loss of the principal advantages of poverty; and also because it is contrary to positive law established by the Church in the Lateran Council chapter Monachi, dealing with the state of monks, where it was decreed: "Monks do not receive remuneration, nor are they permitted to have peculium." Others, however, hold it to be more probable that this is not forbidden by the ancient law, as Sylvester V. maintains. Abbas n. 3. t. 3 tr. 16 D. 3 p. 7 n. 2. . c. n. 5. . 12 c. 2 n. 200 qui dicunt, hanc esse receptam sententiam, et Felix Anton. Umberto c. 18 in Reg.

S. Aug. et B. Jordanus lib. 3 de Vitis Fratrum cap. 13. Reason, because this is neither contrary to natural law, although it opposes the ends of poverty, yet it is not contrary to the vow of poverty, which obligates only Religious persons not to use worldly goods as their own: nor is it contrary to positive law, since from itself rather the opposite appears; for in chapter fin. To imply that clerics or those who have taken vows approve the profession made under the condition of living in one's own home and retaining the administration of goods there for sustenance is acceptable. Whereby it is

inferred, that the retention of peculium is not contrary to the vow of poverty; nor is it contrary to the religious state.

Neither does it hinder the text opposed in Decretals, Cap. Monachi; for, lest the Canons be said to contradict themselves, probabiliter says P. Milante in his book (whose title is Vindiciae), by the term peculii there is understood the appropriation of funds, which at that time the Monachi renounced from the common mass, as attested by Petro Blessensi and Thomassino; and it shows that only this was prohibited by the Council. Lateralensis. But greater doubt arises, whether the peculia are forbidden by new law? The first opinion affirms this, and they hold thus: tr. 8 c. 14 n. 8. 4 tr. 5 c. 7 n. 13. Title: I.

Dub.: IV. On the State of Religious. 56g n. 202 with the Concilium in its 'opusculum (on Apostolic Discipline, Monastic. Diss. Thsol., ubi eruditè, quidem loquitur, siel plus quam par est invehit contra Religiosòs', quodcumque minimum peculium habentes; hòs enim vocat (ut re- fert P. Caratinus p. 8i in alio libro contra Concinan edito) filios iræ, filios perditionis, infames violatòres paupertatis; ac perindè dicit, eos esse in aeternè dam- nationis peirculo, et superiores gravissimi pèccati reos esse', nisi studeant vitam contrahenti, ubi collapsa est, restaurare, nec posse Regulæs in lis Conventibus bonà conscientià manere, ubi non viget vita contraci nis, sed transire debere ad Monasteria vitam contra- nem observantia, sive proprii, sive alterius Ordinis; si aditus pateat; item juvenes Religiònem ingredien- tes, 'ubi vita communis obsolevit; se exponere peti- culo aeternæ saltris.: graviter peccare Superiores eos acceptantes, et illos, qui consilio aut favore illos indu- cunt ad ingrediendum, uti etiam 'parentes filios ab ingressu pro viribus non avertentes; quia (ut ait), ubi vita communis subulata est, Religio non est Reli- gio, nec status perfectionis, sed confusionis et dam- nationis. Thus learned is the aforementioned Author, but too severe a Judge.

When we come to the question; this first proposition is confirmed by the Decree. 25. c. 3 de Regul., where it is said thus: Therefore, it is not lawful for nuns, as much as for monks, that any good immovable or movable property of whatever quality and in whatever manner acquired by them be held or possessed as their own, either individually or under the name of the convent; but they should immediately hand over such things to the superior and incorporate them into the convent. Nor henceforth shall it be lawful for superiors to grant stable goods to any Regular, even for use and fruit, or use alone, administration, or commendation. The administration of the goods of monasteries or convents shall pertain solely to their officials, removable at the will of the superior. However, let the Superiors permit the use of movables in such a way that it conforms to the supply of

poverty, which they have professed; and let nothing superfluous, nor even what is necessary, degenerate into luxury for them. If anyone shall be found or convicted as holding otherwise anything whatever, he shall be deprived of active and passive voice for two years, and furthermore punished according to his Rule and Order Constitutions. - The second opinion, which the Savi hold.

Religious. n. 48. c. n. 11. T. J. l. 1 c. 22 de Alexand. Confess. Milan and with others, he says, the Council did not bring forth anything new, except what had been commonly established beforehand. The Council indeed prohibits (as they say), that no Religious may have a private property with useful dominion in such a way that without permission from the Prelate it can be diverted otherwise, or at least not allowed without just cause; but it did not prohibit that the Superior may, for just cause, dependently on his own discretion, grant the use of private property to the Religious, as he can also grant the use of other things of the Monastery.

Nevertheless, his first opinion seems more probable, having regard to the sanction of the Council. I am led first by those words. No one is permitted to possess good immobiles, or mobiles... even with the name of Convention. Therefore it is not permitted to hold any kind of peculium, nor even by the consent of the Superior; for a monk cannot otherwise be said to have goods in the name of the Convent, unless they are granted to him by the Prelate who holds the office. Conventus represents.

What is said, however, seems to be asserted altogether gratuitously, if it is understood without just cause; all the more so since thereupon the goods are immediately subordinated by the superiors and incorporated into the convent; the phrase "incorporare" denotes that those goods become common, and destined for the use of the entire convent. Moreover I am moved by those very words: The administration of goods should remain for officials alone; but as regards the use of movables, Superiors permit such that nothing necessary is denied to them. Therefore, what pertains to immovables, every administration is interdicted for Religious; and what pertains to movables, only the necessary (and not whatever is decent and pleasing for recreation) is permitted to be retained; by which phrase administration is excluded even for movables for indeterminate uses. This is confirmed from To: In order that henceforth it may not be lawful, etc., by which words the new Council seems to have established a law, whence canon n. 13 states: The purpose (of the Council) was entirely to interdict such kinds of stable revenues or annual monetary portions. With regard to the Decree of the Council, but on account of the custom which today is nearly introduced in all Religious orders, even those that are not reformed, I believe with the same supporters of the said decree, as Pontius l.c., and

also P. Milante p. 169 cum . . Cab.

Mirandola. Cordub. de Passer. affirmant modo esse parata bona a se abdicare ad Superioris nutum, semper ac sibi sufficienter subveniatur; nam alias non tenerentur peculium dimittere, dicunt. Licet hic annotare responsum datum a Cardinale Bellarmino (ut refert P. Milante in citato l. p. 245), qui cum rogatus esset a Cardinale Gesualdo Archiepiscopo Neapolitano, an Moniales non obstante contraria consuetudine tenerentur exacte vitam servare, sic respondit: Si consuetudo inobservantiae est legitime praescripta, videntur posse excusari illae; quae Religiosi sic relaxati invenerunt; nam talis Religio relaxata, in qua tantum omnia substantiaria serventur, est vera et bona Religio; ergo potest eligi, et qui in ea vivunt sunt in statu perfectionis. They say that the aforementioned administration of the peculium at the will of the Superior is. Pontius, et; sed etiam de immobilibus. That appears to be confirmed from certain Breviary edited by Benedict.

XIII. year 1724. beginning, Postulates for the Humility of ours, (and in full 3 7 4 Lib. IV. Regarding the particular precedents, etc., reported by the same Father Milante on page 196, in which the Pontiff, speaking about Religious promoted to some dignity, commands that all goods movable or immovable, of any kind, which they may have possessed at the time of their promotion either themselves or others, excepting only their own writings, be resigned to a superior local authority. Therefore, the Pontiff, although he does not expressly approve here, nevertheless presupposes as licit a peculium, whether movable or immovable, which Religious may have in their possession. This is with regard to peculium of goods even immovable; but with regard to peculium of movables, that is expressly approved by Clement. VIII. Qui (ut refert P. Milante) anno 1662 per suum Breve Cardinali Gesualdo declarandum injunxit (en verba Brevis), quod liceat Abbatiæ cujuslibet Monasterii permittere Monialibus, ut unaquæque earum ex subventionibus, quæ eisdem Monialibus dantur, aliquid expendere possit, absque eo, quod per manus Officiarium erogetur, et sine onere aliam de eis rationem reddendi; summa autem hæc erit scuti unusquse messes pro minutis causis, etc. Præcipit tamen ibidem Pontifex, ut in posterum ne quær ad habitum, neque ad professionem aliqua recipiatur, nisi sub integra reformatione vitæ communis.

But, when again the nuns complained about this last matter, the same Clement issued a Decree in which he thus declared: Nuns however, who... hereafter are admitted to those monasteries where alms are retained, under no circumstances shall be compelled to live according to common life. Therefore from this Decree of the Pontiff, the common life does not pertain to the essence of the vow of poverty, and peculiarities are sent

forth according to custom by due means. The same is confirmed for Religious from another Bull of Innocent. XI. edito anno 1661 approbante Constitutiones Ordinis S. Mariae de Mercede jam prius approbalas a novem aliis Pontificibus; in iis autem Constitutionibus sic statutum erat: Sancimus ne quis Frutrum professorum aliquid proprium habeat, nec pecunias, nec vasa cingentia etc., nec illa expendat absque sui practi licentia... Attendant autem fratres nostri quod singulis annis semel omnia quae in usu retinent commendatoribus suis exponant et realiter exhibeant eorum dispositioni relinquendo et speciale licentiam utendi eis accipiant a prelato. Therefore, since they can retain and expend with license.

However (that I may present what I think about this matter), although the aforesaid second opinion seems probable and credible, nay more, more probable, on account of the universal introduction of such custom; nevertheless in practice all Prelates persuade themselves as certain that, if the use of private property is introduced into Monasteries anew, there will hardly be any name of poverty left there; and from this many evils to the community regarding observance will supervene. Wherefore, although they themselves might be excused from the grave sin by allowing the use of peculium in respect to the vow of poverty; nevertheless, this concession will not excuse them according to the Rule's relaxation, to which without doubt this concession will give effect. All agree, however, that in those convents where the common life is not observed on account of poverty, or because the necessities required for the subjection of the subjects by the superiors are lacking, peculium may be conceded at the will of the prelates. Reason, because the Tridentine decree mandates a common life for Religious; yet from the Convent Nihil is denied to them of what is necessary. Thus Power Fagn, in Alexander, l.c., commonly holds.

Hence it follows I. that in the said case a religious person who retains peculium and does not deposit it in common, but keeps it in his cell with permission dependent on the license of the Prelate, according to his own discretion; because then the substance of poverty is indeed preserved. It is inferred II. that Regulars cannot refuse common life; if superiors wish to establish it, as per Q: a. with Star., because there is possession of goods independent thereof: involuntarily by Superiors 3/4 Lib. IV. Infertur non posse Regularis vitam communem recusare; si superiores illam erigere velint, ut ad Q: a. cum Star. ; quia est habere bona independentem: involuntate Supe- 3/4 Lib. On precepts particular, etc., of the friars. They nevertheless say that according to c. Q. iii, what pertains to, a Religious is not bound to hand over his own property to a Prelate who wishes to convert it for use in the Monastery, unless it be certain that the Prelate will otherwise sufficiently provide for his necessities elsewhere.

It is stated that if a Religious is left a legacy on condition that he possess it independently of the discretion of Superiors, then certainly the Religious will sin against the vow of poverty if he retains it thus; but the legacy will be valid in favor of the Monastery because that condition, as being dishonorable, is rejected. Thus concerning it. V. Q. cum Graff. et aliis communiter. "1." It does not contradict the vow of poverty that Religious have goods in common, even immovables. *(Ex-trav.*

From those concerning the Verbal significance and See 12 c. 2 n. 164. Nevertheless, the Pope can, for a just urgent cause, have the said goods transferred to another pious use. Salmant. d. n. 164 cum . et » . Imo sine consensu Papae non possunt se obligare communitati, quod ea numquam sint acquisituri, quia praejudicarent immunitati ecclesiasticae. C. l. 3 d. 8. Neither can the fruits or revenues designated by the donor for certain purposes be applied to other uses, such as settling debts, etc., ibid. d. 10.

» 2. It does not contradict poverty if a villa or some other place to be administered under the name of monastery is given to Religious, this being for the convenience of the monastery. Nec vero repugnat, si detur in commodum vel incommodum ipsiusmet aliquod ecclesiasticum Beneficium Religiosi. In what case the administration of revenues is fitting for him to apply to pious causes and sustenance according to the concession of the Canons: that which remains pertains to the Church or Benefice to which he is subject; consequently donations made by him from the revenues of the Benefice for non-pious uses are invalid against justice, and those receiving them cannot retain a safe conscience. l. 5. The reason is because he does not have the authority over those revenues.

Case 4, section 1. Nevertheless, Wadding considers donations of regular bishops much more extensively in the same place, namely c. R. i 32 and contra 12, c. 10 q. 6 and 7. Mol. . c. V. 25 t. 2 » de Regul. » 3. It is probable both according to ancient law and after Trent, that a Religious in a Monastery can be assigned an income annually, so that from it she may live conveniently for her own comfort; yet revocably at the will of the Prelate: that military service may be performed by the Nuns, so that they themselves may earn clothes by their own manual labor.

Thus according to Cont-trà and Mol. it is taught. And Moral. c. 22. » Tan. . 4. c. 7. He adds: such a custom, where it prevails, is not to be condemned; yet he approves of its removal if it can conveniently be done, and warns that it should not be introduced except in the most urgent cases. 4. The religious person commits a sin against poverty if he takes, retains, consumes, exchanges, gives to another, or accommodates anything, whether within or without the house, and pertaining to sustenance and

clothing, without the expressed consent of the superior, either tacitly or presumptuously.

Thus. 2 c. 41 d. 8 et d. 9 n. 79. . c. 19 n. 53 et c. 21 n. 32. l. 8 c. 11. . 4 t. 5 c. 7 12 c. 12 » » 4. A religious commits a sin against poverty if he takes, retains, consumes, exchanges, gives to another, or accommodates anything pertaining to food and clothing, either at home or abroad, without the expressed consent of his superior, whether by tacit or presumed consent. Thus. Chapter 2, Article 41, Declaration 8 et Declaration 9, Note 79. Chapter 19, Note 53 et Chapter 21, Note 32. Book 8, Chapter 11. ». 4 t. 5 c. 7 Az, t. 3 l. 12 c. 12 » » I have spoken, without tacit consent: because, if the Prelate knows that a subject is receiving, retaining, or expending something, and does not prohibit it, when he could easily tacitly consent and approve, it seems that he tacitly consents and approves.

Wherefore in chapter 19 he says: if there exists some custom of a certain Religious order for receiving or expending without license, this can be excused by tacit permission of the Prelate, who thereby tolerating it declares a reasonable custom. §,§ Lib. IV. From the Fleece. Boy. "Let it be deemed a tacit permission to give away images, rosaries, etc., knowing that one does not stand in need of all these things for one's own use; such consent is not to be presumed except in trifles and matters frequently occurring."

» I have spoken of a presumed consent; here indeed he has a place when the matter is urgent and the superior is not present. To this, however, as he desires, it is not sufficient that the superior be willing to concede, if you should ask (otherwise all donations which are usually permitted by the prelates would licitly be made without permission: which would lead to the overthrow of regular discipline); but it is required that himself consent to concede, even though you do not ask and he does not wish to, in those circumstances where you ask. They nevertheless add that an excuse may be made for a mortal sin if the superior is presumed to be willing to grant permission if requested. The reason is, because then it would be deemed to have been obtained by the will of the Superior at least virtually, which lies in that affection; hence, if the Superior were only unwilling thereto in a certain measure, venially indeed one could sin against this; yet not contrary to poverty, they teach. Laic l. 5 tr. 5. c. 7.

It is therefore asked, whether it is permissible for a Religious to dispose of an alien thing, or to receive it by presumed permission? They commonly affirm that, if permission is presumed at present, it is from either the actual or virtual will of the Superior. But rather Lug. D. 3 n. 125 et . 13 de Hinc in-fertur, exousari saltem à moralia (ut ajunt . 2. c. 41 n. 79 et Idem

di-eunt Salmi. ib. et Lugo n. 126, si dato vel acceptio ce- dere: in utilitatem. Monastery.

Moreover, if the Superior cannot easily be approached, and there is a pressing reason for receiving or alienating something, they should nevertheless manifest it to the Prelate, so that subsequently it may lawfully be retained. The same [Ebel] says on page 631 note 640: if the Superior easily grants permission for certain matters, especially those that are excruciating and insufferable; but in well-ordered monasteries such permissions are not commonly granted at all times, unless it be for very minor things and those frequently occurring. These things teach the aforementioned authors when it concerns a presumed license regarding the present. But a great question is, whether it sins. The religious, contrary to the vow of poverty, when he receives something or gives it, by way of interpretative or presumed license for the future; namely, presuming that the Superior would assent if compelled?

The first opinion, which they hold. 16. D. 3 p. 23 n. 8 cum . . et P. ap 7. c. 19. n. 13. et Pelliz. 6 n. 67 negat talem Religiosum peccare, saltem mortaliter. They say this proceeds. . at . cc. cum; nisi (bene excipit. This opinion is also taught in II q. 32 a. 8 ad 1, where it is said: If, however, he does not have dispensation (one committed by the Prelate to the Religious), since he has nothing proper to himself, then without the license of the Abbot, either expressly granted or probably presumed, he cannot make alms giving. The same is taught in 4.

D. 15 q. 2. a 5 q. 4 ubi dicit: Non esse proprietas. The religious who gives something potent, according to Liber 5, caput 8. IV. On Precepts particular, "and also hope in the ratification by the Prelate." Reason, because for not sinning against the vow of poverty that suffices the license which makes it so that reception does not occur by its own name, but with dependence upon the will of the Superior.

This is confirmed from law 46, § 7, de Furo (whose words we quote number 700v). Fourthly, here it is said that one is not guilty of theft who receives something believing it probable that the Lord will consent if he were to ask for it. Just as such an acceptor, by reason of a presumed consent of the Lord in the future, does not commit injustice; so also the Religious does not violate the vow of poverty by accepting, through a presumed ratification from the Superior, already depending upon it. The second opinion holds that the Religious who receives or gives with such an interpretative license sins against vow, and from this follow 7 c. 19 n. 15. 2 c. 41 n. 79. Lag.

D. 3: n. 144. et Garcia. Reason, because when permission is required for the honesty of an act, one thing must be said (as they say), but when it is required for its value; for when permission is required for the honesty, sufficient is the interpretative permission of the Superior, whether by ratification in the future. But when consent of the Superior is required for the value of the act, then absolutely the actual or at least virtual will of the Superior is required, and his presumed will in the future is not sufficient; just as it is not sufficient that one may receive absolution from Confession or eat flesh on fast days because Superiors have granted permission if such a request were made. Nor does the permission to commit theft trouble the conscience; for Lugo responds in n. 127 that there suffices a good reason to excuse the receiver, so that he may receive without displeasing the Lord; but for the value of the act of giving or receiving, it requires the actual will of the Superior at present, since such acts by a Religious are not valid unless dependent on the will of the Prelate. But notwithstanding this, the first opinion seems more probable to me, and I think that the learned doctors of these days have not touched the point in question, wherein it is not about the value; but about the honesty of the act: for their adversaries confuse the value of the act with its honesty; for the reason given proves indeed that a Religious's act is not valid unless the Prelate has ratified it afterwards; because it is certain (as we said in Cont. 769., s. Sed dubitatur), that for the value of contracts, an interpretative will is insufficient, but an actual or at least virtual will of the contracting parties is required present-wise: and hence rightly it is said that a Priest cannot validly absolve nor another eat flesh on forbidden days unless they have received permission from their superiors, even presumptively present-wise; for otherwise a Priest cannot validly absolve without present jurisdiction being conferred upon him, nor anyone legitimately feed on forbidden days' flesh unless already released by dispensation from the law. Non autem probat ratio allata, actum Religiosi accipientis ex licentia interpretativa esse illicitum, et contra votum paupertatis; ad agendum enim contra votum requiritur, ut ipsi contrarii fatentur, quod Religiosus agat nomine proprio, et independenter à voluntate Superioris.

Non autem agit nomine proprio, et iudependenter, qui accipit ex consensu Prælati prudentur interpretato, quia tunc verè cum dependentia agit. Neither does it hinder to say that, since the act is invalid, therefore it is illicit; just as the Priest illicitly absolves him by virtue of a presumed episcopal faculty for the future, because he absolves invalidly. But the reason for this case is different from our own; for in that case the honesty of the action depends upon its validity; whereas in this case the honesty of reception does not depend upon its value, but upon not acting with one's own name and independently, since it alone wounds the vow of poverty;

and thus in our case an act of receiving here and now can be licit when done dependent upon the presumed consent of a Superior, even though it is invalid here and now and will be valid only if the Superior does not annul it: just as someone who contracts Matrimony with impediment does so licitly, although invalidly. It does not hinder to say that, if our opinion were carried into practice, an occasion would be given for relaxation; for it would hardly be a case in which the subject could easily presume a grantor of license, if he petitioned, at least from more senior prelates, should the inferior deny. But it is replied that first attention should be given in such cases of presumed license, so that those who receive do not escape venial fault, since prelates are usually unwilling to allow a mode if it does not reach the substance.

Furthermore, it must be noted that such licenses are not easily to be presumed without there being a certainty, or at least a certain probability, of their grant; for they are not always tacitly approved by those before whose eyes things are done, which superiors are often compelled to tolerate more than they see committed against their will. Moreover, licenses which are denied by inferior Prælates can scarcely be presumed to be conceded by superiors, since they themselves, for the purpose of justly governing the community, scarcely concede what is denied by inferiors. Hence, in such licenses they are to be regarded as reluctant even as regards substance; for if matters are trivial, and greater Prælates do not intervene in such minor causes, there is no prudent presumption concerning their concession; but if matters are of greater moment, a license cannot be presumed without suffrage, lest it give occasion to receive and retain licenses regarding things of still greater moment without express permission, which would entail grave detriment to the religious poverty. Against the vow of poverty you sin, if from things conceded to your use for one purpose you turn them to another use, or if you lose them doubly, or destroy them through negligence. The reason is: because in those things you have only the use of fact, which is a prayer as long as the Superior sees fit, and is but the abuse of dominion, to be able to destroy the thing by one's own discretion. Since, c. 49.

20.: Notandum I. That Religious, although he cannot give nor remit debts to himself, nevertheless cannot renounce legacies left to him without rewarding his own labors, because the right to these is immediately acquired by the Monastery, as Sachck says. I. 7 c. 12 a. x. 55 et de i Qu. 7 potest tamen Religiosus non accipere dona; nam votum paupertatis obligat ad non alienandum acquisita, non vero ad acquirendum quaenondum atque acquisivit. Thus, if you ask a Religious to lend you one hundred, you may! ask him to give it to your kinsman or friend; with God's grace. Trul. t. 3 p. 80 n. ad quem addit: Religiosum nolentem sine justa causa

acceptare quod sibi offeretur, peccare contra charitatem in impediendo bonum suae Religionis, non vero contra justitiam.

Nota II. That a Religious, even if with permission, may make remunerative donations from goods conceded to him for use, because such donations are as it were redeemable solutions, c. n. 24 with Rod., and ibid., because they require gratitude, that more should always be given back than has been accepted, as the Saints say. Bard. Ph. apud . c. 6 n. 92. Notandum III.

It may happen that a Religious cannot testify in any way, as is common when it comes to two then being held to promises made by the Prelate. Just as, if the lord promises something to a servant, he is bound to keep it, as is taught by St. Thomas in lib. 7, cap. 9, n. 13. Here is questioned whether a Religious can give away anything without license, which will somewhat diminish him in living from the goods conceded to him for use? They affirm Val. . d. c. 6 n. 26. Even though they consider this probable; yet they say that the more probable answer is this: namely, that if a Religious is assigned a certain quantity for his sustenance, such that neither the Monastery nor the Library would be left short.

IV. Regarding the precepts of the particular matters, etc., let something else be provided for him; nor should he give an account thereof; then whether he remain within the cloister or go outside, whatever he may have withheld from that portion, he can appropriate to his own pleasure, provided he uses it for a worthy purpose. But if no certain quantity is assigned, and all necessities are ministered by the Monastery; then it is not presumed, as in the first case, that the Prelate grant permission. Thus 7 c. 19 n. 100 et 101. . c. cuìr. . Garcia, Mol.... Authors, however, commonly permit Religious, who live with due license outside the Convent, to make moderate alms from what is supplied to them by the Monastery or by others for sustenance. Item permittitur Religiosis, ut elargiant, cuivelint, suas pliantias, quae limitatè eis præbentur, ut ova, carnes, etc., ita Sylv.

S. Anton. 4. 4 § 4 q. 5 nisi Superior exprèsè id vetaverit. Before the task is undertaken, it is permitted to them to assist with aid a poor person who labors under great poverty, when access to the Superior is denied: likewise, it is permitted for them to make slight donations to friends and consanguineous relations as a sign of gratitude, or due to proper friendship, or in order to win affection from others toward Religion. Thus 4 n. 123 with S. Augustine and c. 20 n. 32. Religious, ut dent aliquid accouhenti vel poculenti pauperibus, quia in his Praelatus præsumitur consentiens. It is asked: What quantity is required, so that a Religious, by expending it, sins gravely without license!

From Navar. Azor. tract. 16 D. 3 p. 20 num. 3. 7 cap. 20 num. 3. assignant pro materia gravi quatuor argenteos. More agreeable to the merchants; and even more so, if the matter does not concern money, but rather clothes, books, and similar items. C; of Lucan concerning Justice. D. 3 num. 173 pro Conventibus mediocriter opulentis assignat septem vel octo argenteos, si accipiantur à Religioso ex destinatis ad suum ipsum; et plus, si res surripiatur ad usum proprium, et remaneat in Communitate. Si vero res surripiatur ex rebus communibus, Monasferii, et detur extraneis, putat sex argenteos esse materiam gravem.

Moreover, Ledesma and Cenedo at the same Lugo, n. 170, hold that it is not a mortal sin to receive 8 or 9 argenteos from things which are not consumed by use; provided that this does not exceed once or twice in a year. Others, as Solomon and d. n. 47 (and Aragon thinks it probable) say, require two gold coins as a serious matter. Others, however, considering the gravity of the matter, as Rabelli says. Croix l. 4 n. 133, idem dicendum esse de furtis Religiosorum quod dicitur de furtis filiorum juxta dicta de 7. Processus n. 543: Et consint Holzni, n. 595 ac n. 633 n. 646 cum Hanno et alii, dicentes quod Religiosi furantes materiam com- muniter gravem, nisi furtum redundet in grave dam- num monasterii, sint peccatores quidem contra votum paupertatis, sed non contra justitiam; unde non erunt obstricti ad restitutionem.

But it is more probable to deny this, namely, that grave sin be required of Religious, so that they snatch away a quantity which is needed by children; thus Lugo, Decretum 3, n. 172 and 7, Caput 20, n. 3. Reason, because children are considered as it were in the hope of inheriting the goods of their parents, whereas Religious [persons] cannot succeed to the monastery; and also because parents are unwilling with respect to the temporal detriment of their children in thefts, but Prelates are unwilling even with respect to the spiritual detriment of Religious persons in thefts; hence Prelates are more readily presumed to be unwilling for the theft of Religious persons than parents for the theft of their children; all the more so because children are capable of possessing well, whereas Religious [persons] are not, being bound by the vow of poverty. When however a thing is given to a Religious of the same Convent, certainly more is required, as those say hence he says it. Coriolanus. Quod ex rebus ad usum concessis donatio 42 regalium tunc non esset materia gravis; Ledesma extendit ad viginti argenteos: imò Lug. . apud . e. ajunt; quod, si res hòn sit pecunia, nec etiam valer 5 aureorum, tunc nòn sit futura gravis materia. If however anything is received from strangers for distribution to others; still more is required; for then Garcia and assign a greater value of forty-seven silver pieces as material of weight.

However, regularly a Religious does not gravely sin by publicly receiving, for example, a book for temporary use, even for a long time, but not in perpetuity; because then the Prelate is not considered unwilling with regard to the substance, but only with regard to the mode. Ità Az. Pell. . 25 Question 3: Whether a Religious sins gravely by gradually accepting things without permission, if the theft reaches a great quantity and he holds on to restitution? Negat et consentit in aliquò Lugo; judicans, tard contingere, quod Religiosus modica ac dipiendo sine animo perveniendi ad magna graviter peccet, quia Pretali contra talem nonquam graviter offenduntur. Nevertheless, they more truly affirm what Garc et al. say, although they require a greater quantity for a grave matter.

They also admit, together with others, n. 52; this theft does not coalesce if a great interval intervenes between them; but these, in order to be considered great; but . n. 55. at the end. with Sp. They think, that a space of a month is sufficient. See: diota de Furto n. 53o; They also admit it with n. 57. And now, let it be admitted that the augmentation of the convent is not excessive, and in an extraordinary matter and more precious, as noted at . 4 §: 1 q. 5. cum . 28 Question 2 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 28 Question 2 4 1 1 1 1 1 1 1 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 some debt to its Monastery, it be held that what is given from itself for use? They affirm n. 236, because it is least presumed that a Prelate would obligate his subject to such great inconvenience; and truly it is very probable if the things given are for necessary use.

Question 5. whether a Religious sins if he lends 19 without permission things that have been granted to him for his own use? Assert it, but not: seriously, if he is safe regarding restitution, as they hold. And from "6" [it follows]. You sin if you conceal something, so as to deprive your Superior of free disposition thereof according to that. Nor can Curators, Economists, Administrators, or Inferior Prelates expend anything contrary to the rule of the Order, the will of the Superiors, or what Reason demands, because they are not lords of common goods, but merely administrators, Thom. Item, si quid abscondes, ut illud 28 liberæ dispositioni Superioris subducas.

If a Prelate permits his subject to have possession of goods, whether they come from any cause or title, for use in vain, base, or illicit purposes, or superfluous and pretentious ones that demean his own state, then both the Prelate and the subject sin against the vow of poverty; such a donation or alienation is liable to be subjected to restitution. Because the Prelate cannot grant indulgence greater than he himself possesses: but since he is not the lord of the goods, he cannot dispose of them according to his own

arbitrium; rather, they should only be expended for the necessity and utility of the Religion. V. Si Prælatus permittat subdito ut bona ex quacunque causa aut titulo provenientia in usum va-nos, turpes, aut illicitos expendat, aut superflua, pretiosa, et statum suum dedecentia penes se habeat, peccat et Prælatus et subditus contrà votum paupertatis; estque talis donatio seu alienatio irrita et restitutioni obnoxia. C. 3 s. 7 n. 11. Upon this point I. The question arises: whether the license granted by the Prelate to a Religious for the express expenditure of something for illicit uses is invalid of itself?

They affirm with Bus. here . . 4 n. 114., and this absolutely hold with the common, as they assert. Reason, because the Prelate is not a lord, but merely a simple administrator of the goods of the Monastery. However rightly they concede with Pal. that a valid license exists for retaining superfluous things without notable excess; because otherwise the matter would be subjected to great scruples. On the contrary, Lugo says in justice. D. 3 n. 137. with .

Table and Saint Anthony. Sylv. Turrecr. c. tenent, licentiam esse validam, quamvis illicitam: si enim, inquiunt isti, Superior licentiam daret ad emenda superflua, quis dicet, emptionem esse invalidam? Idem censent et cum Ills. dicentes, Religiosum, qui habet superflua ex licentia, peccare quidem contra paupertatem, cum votum paupertatis obliget non solum ad accipiendum cum licentia; sed etiam ad non habendum superflua; sed non peccare contra justitiam, nec esse proprietas, quando habet cum licentia, quae nullo jure habetur esse invalida, nisi vertat in grave damnum Monasterii. I dare not absolutely reject this opinion on account of the Authority of so many Doctors. But the first sentiment utterly displeases me; for as they say in 2 c. 41 n. 79: But it cannot be said that she conceded to herself the faculty of granting license for illicit or superfluous uses, neither can Sacred Canons permit this, since contrary is drawn from them, as is found in Clement f. de Statu Monach., where all superflua are expressly prohibited; nor Religion, which never considers itself as conceding such a thing to the ruin of her spiritual children. 31.

II. The question is, whether when a Prelate grants a general license to a Religious for the expenditure of some sum at his own discretion, if he expends it on base uses, or we [the Religious], sin against the vow of poverty, and are bound to restitution both ourselves and the recipient? The first opinion affirms. Reason, because neither the superior intended to grant such a license for illicit uses, nor could the superior himself grant this license, since he is merely an administrator. Thus Sylve. 4 n. 143.

And they consider this to be more probable. According to this opinion,

they say. Mol. ibid. n. 106. quod ille qui male accipit rem a Religioso, jam bene satisfaciat, si ipse Religiosus rem restituat, quia ponit rem in eodem statu, in quo eam invenerit: modo ipse (excipiunt cum cit.). DD.) non timeat, ne Religiosus de illa re abugetur. The second opinion, however, contradicts this, and they hold thus according to de Bure.

Pelliz. n. 84. they call probable this [position], Lugo D. 3 n. 137., c. saying, non obstare quod superior non sit dominus; nam respondet cum Reb. saltem monasterium esse dominum ut possit disponere de bonis suis ad omnes usus: et saepe praesumi monasterium consentire quod subditi expendant in quibusvis usibus et maluerint id quod generaliter est eis concessum ad expendendum ne periclitetur fama subditi aut superioris ut dicit Reb. Then Lugo says that although the superior is a simple administrator, nevertheless his power is not known to be restricted solely to granting lawful uses. And, as they say and Salas states (and this very thing he does not consider improbable), it should not be thought that the Superior, when granting permission, limits it solely to licit uses; for himself, by giving general permission, wishes and can remove the impediment which the subject has from the defect of the permission to expend. In like manner, if the Pontiff dispenses with consanguineous relationships for Marriage, he does not merely dispense for the act of conjugal union, but also removes the guilt of incest, even as regards illicit copulation, (as they hold and 7 L. D. 67 n. 8 with Lamas, etc.). In like manner, if a Bishop, to whom dispensation has been committed, has already dispensed, as more truly states Sancius numer. 9. contra Major. And also, if the Pope dispenses for eating harmful flesh during Quadragesima with someone, if this person eats such harmful flesh, he will indeed sin from intemperance, but not against the precept of fasting, which has been removed by dispensation. IV.

According to particular precepts, etc., this is so. (But as regards this, there is an obstacle from the Decree of Clement XI reported in tractate de jejunio n. 1015.) It is asked hereafter. Thus he speaks with others as was mentioned above. But, notwithstanding this, although I would not dare to condemn this opinion, I embrace the first: when it is not sufficiently proven to me that the superior has the faculty of granting permission, neither specifically nor generally for illicit uses, as I said just now in I. Question Nonen. 30. Or because the Monastery consents to such licenses to such a degree detrimental to the souls of its subjects.

But they also permit others to be excused from restitution when one who receives something for a base use takes it from a Religious, provided that either the honor of Religion or the Religious themselves would thereby be endangered; or if, for example, a woman received something from a

Religious for a base reason, and this person then changes their mind and intends to give it freely, because the woman is poor, or so as not to suffer damage in reputation; then indeed it would already pertain to a proper use. And hence, when a woman reasonably presumes such consent from the Religious, she will at least easily be excused on this point. Therefore, c. 32 III. The question is, whether it can be granted superior permission to stake a certain sum at dice? It is certain that it can be done; if the sum is small; in which case the subject may even use recent tacit or presumed permission. Azor, etc., with Quodd. As for the quantity however, some say that the Religious can expose as much as he can generously donate; others say 4 or 5 gold coins per hundred annually for the use granted to him.

The game, however, should be licit, not illicit, as is the case with games of dice, backgammon, and all mere fortuitous games; otherwise, by custom some religious permission is granted to play for a small sum with gaming papers, as stated in no. 873 of the Decree on Ludo. It is doubtful whether a superior can validly give permission for an individual to expose a large sum in gaming. They affirm. 2 c. 26 n. 36 cum Hurt. Salas, et Amic. according to c. n. 96, because any license for entering into a contract, just in itself, is valid by its very nature. But they deny this, saying that the simple administrator, such as is the Superior Conventus, cannot grant permission to enter into such contracts for themselves alone, who can squander their possessions at their own discretion.

What indeed is to be said, if the license has been broadly granted? This question is comprehended under Question II, as already mentioned above, which one can peruse. However, a Religious may be able to gain more through gaming than he loses; see what is stated at no. 874. IV. The question is, whether a license sought but improperly denied excuses from the transgression of the vow of poverty?

Resp. non excusat, nisi periculum gravis damni sit in mora: tunc enim presupponitur adesse consensus Superioris majoris; et si iste tunc quoque negaret licentiam, potest aliquando prudenter judicari legem vel votum in tanto discrimine non obligare. Thus probably. 3 p. 23 n. 10. o. 4 § 3 q. 6. And this is well-suited to the teaching of D. 6 at the end, which speaking about law says: (If however there is a sudden danger, not enduring such a delay that recourse to the superior can be made, necessity itself has an annexed dispensation, because necessity is not subject to law.) The same must be said about a vow, which is a kind of particular law, and whose obligation does not press when such a danger is imminent. But it notes that the denial of permission will then excuse; since it is due both from the part of the Religious and from the part of the Prelate, but not if only from the part of the Prelate, so that the subject does not have the right to the

granting of permission. V.

It is questioned whether a Religious may lawfully give something to someone by virtue of license 34, if he did not know that his Superior would not have granted permission for such an indulgence? Respondent to question 7: then it must be considered in what disposition the Superior is; hence, if it is presumed that he would revoke the permission altogether, then the permission does not hold; but otherwise it should be said, if it is presumed that the Prelate does not wish so. IV. To revoke particular permissions, even though from the beginning he might have denied the license, if he had known the circumstances. In dubio autem præsumitur pro validitate actus, id est licentiae date; intellige, si non possit Superior adiri. 35 VI.

The question is, whether poverty can be abolished by custom? They commonly deny that it has substance, but assert that it is with regard to mode. Such a custom is presumed just when itself it is practiced by Religious even those who are timorous and knowledgeable, and not contradicting Bishops; although they could easily contradict. Thus concerning § 1 q. 16. 36 VII. There is a question regarding nuns: whether the Abbess has the administration of the goods of her own monastery?

Resp. It has indeed, if it does not obstruct the Rule or custom. Moreover, it cannot concede permission for making immoderate donations, as §1 q. 11 states; one is not obliged to dispense with superfluous goods for almsgiving, but is bound if such goods are applied to augmenting the Church, or habitation, or revenues of a Monastery, so that it may be able to support more Moniales, or so that the common life may be better preserved, according to c, q. 23. against others. The superior, however, in dispensing goods to his subjects ought to consider necessity, and not the dignities of persons, nor his own private advantage; so that the abbess may contract in matters of small importance without the consent of the chapter, but in more serious matters the consent of the chapter is required; this is known. Of these things which are done, d Præl.

Above all, if money is received for lending, which subsequently is not applied to the benefit of the Monastery; otherwise the Monastery would not remain obligated, as Tap. Barb. Nevertheless, with the consent of the Abbess and the Chapter, at least as regards the majority of the Vocalians, the Monastery should remain bound by the contract, according to c, 2 de Ordin. cogn. Whether, however, the remission of debt or the annulment of the bond made by the Abbess and Chapter is valid? They probably affirm, provided that a just cause intervenes; they deny it, because nuns cannot injure the monastery which has already acquired a right to the thing.

And therefore they say that it is not possible for the Abbess and Chapter to alienate the immobile goods (of) the Monastery (or precious mobile goods which can be preserved); nor to lease them beyond a three-year term; nor to transact over the goods already incorporated into the Monastery, unless the matter be contentious or prejudicial: nor to appropriate them except in case of urgent necessity and not being the time for seeking the Holy See's decision: nor to impose a tax or mortgage upon them: Quart. and others. Neither receive monies for exchange with a solution ending; according to the decree. Holy See, ibid. Nor alienate flocks; nor oxen necessary for the cultivation of the monastery's fields; yet truly beneficial are the fruits of the flock. . ib. However, it is permissible if the thing does not exceed the value of twenty-five pieces of Romanian money, and the alienation is for evident advantage of the Monastery; or if the thing is useless to the Monastery.

See elsewhere with Potest and even the Abbess instituting Beneficia and conferring Capellanias, which is only a title and possession, but not that they have ecclesiastical power, as in c. 11 § 1 q. 8. Thus also, although she herself cannot suspend her clerics, she can nevertheless deprive them of their title and possession of benefices; for by such deprivation it is considered that the Pope himself takes away even the spiritual jurisdiction. Thus See. « Resp. 2. A religious person is bound by the vow of chastity to abstain from every voluntary venereal delight, internal and external; hence, if anyone should sin against chastity, he commits two sins, that of lust and sacrilege. * (And it is very likely that he also sins against the common good, if there be danger that through his own sin the Religious person may become infamous. . etc.) * Therefore, for greater protection of chastity, enclosure has been introduced not only for Monastics but also for Religious persons who cannot leave the monastery without the permission of the Superior. Thus from the Constitutions themselves, where it is thus stated: No one shall dare to leave the Convent, except for a cause and with a companion, and each time obtain permission from the Superiors; who otherwise does not grant it, unless the cause be approved and join as an accompaniment the person about to go forth, not at the request of the one seeking permission, but by his own discretion, nor the same person more than once repeatedly; general permissions to leave are not granted to anyone.

But here it is asked, what sin is it to go forth without license? Commonly DD. say that, according to Censure, however reasonably they number it as n. 69 and c. with. Miranda, Pell., and the common opinion (contrary to Suarez) do not consider it a grave sin for a Religious once or twice to exit without permission from a day; they say this is done out of contempt or

with scandal; but rather it should be said concerning nocturnal and clandestine departure. As regards excommunication on account of violation of the clausura of Regulars or Monials, see what is to be said about censure in [the text] l. 7 n. 239. 38 » Resp. 3. Religious is bound by vow of Obedience to do all things which the Superior commands according to the Rules and Constitutions of the Order, whether directly and expressly, or indirectly and implicitly.

And indeed, si praecipiat in virtute sanctae Obedientiae, in nomine Domini nostri JESU CHRISTI, vel simili forma, tenetur sub mortali, quia intendit obligare quantum potest: sub veniali autem, si alia forma utatur, vel sub nullo, quod consuetudo in Sylv. 6 mor. c. 1. Note: What must be observed is this, that unless the Prelate explicitly mandates, for example, by saying "I command," or "I order," etc., the subject is not bound to obey; thus it is stated in n. 47, that obedience should be rendered gravely, as taught in c. 4 n. 26 with c. 14, unless added: "In the name of our Lord JESU CHRISTI, or by virtue of Obedience: or unless full excommunication is added, not only to be endured, but also to extend widely, as they say Navar. » Vasquez et alii concurrunt in hoc. Porro, quae indirectè pertinent ad Regulam, Sylv. 39 et quidam alii ampliant ad illa, quæ faciunt ad pleniorem ejus observationem, ad res valde necessarias, sine quibus Regula com; modè servari nequit, alioqui enim Superior quavis corporis macerationes præcipere posset: ordinantur enim ad pleniorem observationem Regulae. Book 4, Treatise 5, Chapter 9. Book 2, Chapter 4, Decree 9. » 1.

A subject is not bound to obey in those matters which are either contrary to or in accordance with the Rule (unless the Superior be able to dispense therefrom, and a legitimate reason for dispensing exist). Hence it must be held that a Prelate having dispensed without cause, you are not bound to obey accordingly. Peyr. et communi), vel supra Regulam ut essent magnæ macerationes (nisi in poenam, vel ad obligationem votorum necessariæ). vel ut acceptet Episcopatum. Ita muni d. c. 5 n. 77. Or that he accept a benefice with cure of souls, or simple; Or that he go among infidels with manifest danger to life, or to servitude; n. 73 and others. However, it is held that one must accept a charge within an Order, if a Prelate commands: Generally n. 79 and even if a contrary pact has preceded, the pact is rejected as disgraceful, as stated in Q. 10 with S. 33 and others six: or according to the Rule, namely vain (unless commanded) from a cause which is according to the Rule, for example, that obedience may be exercised); nor does it matter that the Rule commands obedience in all things; for this is understood not of the obligation of a vow, but of the perfection of obedience. Ita Suarez; c. 2 et An autem Religiosus teneatur obedire Praefato prae-394 Lib.

IV. If it is absent, he who would minister the necessary Sacraments to them should postpone temporal life for the salvation of their spiritual welfare and the proximity of their neighbors. Ita c. 2 n. 57. d. 4 p. 4 n. 7. t. 3 p. 101 n. 163 cum Caj. Lex. . 4i » 2. If the rule of the Order binds under sin, then a transgression against it is a violation of the vow and sacrilegious.

The reason is, because such a Rule is no less preceptive than the command of the Superior, and the subject promising observance of the Rule in that manner is considered to be bound accordingly: henceforth the Carthusian, v. g. one who eats flesh, or a Franciscan fasting on the sixth day not abstaining from meat, and thereby sins against obedience and against temperance; S. Th. in II d. 44 q. 2 a. 3. Val. . c. 1 et 4. Vasq. . l. c. n. 6. 3. If the Rule does not oblige under sin, the transgressor thereof does not commit a breach of the vow of obedience.

The reason is because such a Rule does not properly contain a precept, but merely is an ordinance or a warning, obliging to punishment only if it is imposed, S. Th. Therefore neither is a transgression of that kind, for a reasonable cause and with a good intent, or from a motive of virtue, such as when speaking extra-tempore with a companion to console him in sorrow; yet it will be venial if it arise from negligence, spiritual torpor, or some other disordered affection: * (Idi S. 9 ad 1. . 6 c. 4 n. 14 et . 4 tr. 5 c. 9 h. When it is constituted an expulsion by Vasquez, there will be mortal sin. . 5 c. 9. Chapter I. Dub.

Four. On the State of Religious Life. 4. Although they may establish a new statute with the Capitulars No. 4, whereby those who will later profess themselves shall be bound; yet previously professed ones, who did not consent to this law, are not thereby bound, unless it has been directly or indirectly specified in the Rule of the Order, c. n. 10. Unless, however, the statute be made in the General Chapter, or at least in the Provincial one (according to the institution of the Order), provided that a greater part of suffrages concur, and it not be contrary to the Rule.

V. Es cocbe de lege. E. 1 c. 12 n. 15. The reason is that what touches all should be approved by all according to rule 39 in 6. They add from Sylv. and 13 c. 11 q. 19. that the Pontiff cannot coerce Religious to a more straitened mode of life than the first form instituted by the Institute allowed; because the obligation to obey, even the Pontiff, proceeds from vow, which was made according to the primary institution of the Rule.

If however the reform of the Rule were a necessary medium for the conservation of the Order, then the Prelate with the Chapter, and even the Pontiff himself, could be permitted to compel them when each is deemed implicitly obligated to this. Sylv. . ll. cc. It is asked, whether Religious are bound to obey Bishops reforming the Rule when it has collapsed? It is certain that, after the Rule has been relaxed by legitimate custom, although the first Religious may have sinned, the second are not bound to observe it, as they abundantly approve and teach in chapter 39, canon 6, note 26 c. 2, etc., and from there. Turrib. c. 6 n. 38 cum Cordubae, Palœ. Sisters (citing also et; for) The reason for this first proposition is, because Religious persons, professed according to the Rule, are to profess it as originally instituted; hence salter: 396 Lib.

IV. They should be prepared for particular precepts, etc., so that they may observe them when it is treated about instituting them. They nevertheless receive it, unless the Religious expressly intends at the time of Profession not to be bound more than by that Rule thus relaxed. Others, however, as Palaus tr. 16 d. 4 q. 4 n. 11., and tr. 5 c. 9 n. 13 with others, as stated above at 101 n. 161, declare not less probably (as it is expressed in 83 Q. 3), and perhaps more prob- ably, that Religious are not bound to this unless Reformation appears as a necessary medium for the conservation of the Order: namely, if with present observance they strive for the perfection of Religion by means of very few, or if they live according to the scandal of the Seculars in such a way that it would rather be expedient for Religion to dissolve than to continue thus. Reason, because he who has made a profession is rather considered to conform to the present Rule according to the current state, than according to the former Institute.

"Et ait autem." Bishops are able to eat new Statutes when they are necessary, so that essential vows and other Statutes of the Religion may be kept. 45. "Even though it is not customary nor has a decree been issued that prelates command internal acts while under sin: yet it is probable that this can happen, as Lay teach." 46 Question NoneHic, quot peccata committat Religiosus, contra Obedientiae præceptum agens? Sotus, c. 6 n. 100, dicit, committere unum tantùm peccatum contra votum obedientiae, quia ex voto tantùm tenetur obedire.

They, however, more probingly contradict Pell., who hold that he commits two sins thereby, one against Religion on account of his vow, and another against the virtue of Obedience which a Religious owes to his Prelate by reason of a promise and tradition made of himself in profession, by reason of which he is bound even without a vow to obey a legitimate Superior. "You ask whether the subject is bound to obey if there is doubt whether what the Prelate commands is a lawful matter or whether the cause of the

command is just." Resp. I. Quæres, an subditus teneatur obedire, si dubitet, utrum sit res licita, quam Prælatus jubet, vel justa sit causa imperandi? Commonly held, because then the condition of the Superior is better, who is in possession of the power to command; but in doubt no one should be deprived of what he has by law. Nor shalt thou say, that even a subditor is in possession of liberty, since he hath a debt of obedience.

Resp. 2. Not bound to be obliged if one fears great harm from obeying. The reason is because in a doubt one should favor the accused, to him concerning whose damage we are speaking. Even though the subject is not in possession of freedom, he is nevertheless in the position of law, by which he can protect himself from dangerous matters. . 6 mor. c. 4, and others. » Question None

I. Whether a subject doubting whether something commanded is licit or not, can and is bound to obey? It seems that Adrianus denies this in his work at II, c. 41, n. 76, saying: "No one who doubts about an act whether it is mortal or not, lawfully obeys while still doubting thus; Vasquez and Rodriguez also hold that he cannot obey in such a case, since it is altogether illicit to perform an action with a practical doubt (which Adrianus alone says this, and Vasquez and easily understand the same thing); yet he is nevertheless bound to set aside such a doubt in that instance, and so can and should obey; Glossa in c. Ad Aures, 6 de Temp." Order fifth. Obedience, ubi dicit: Si vero dubium sit præceptum, propter bonum obedientiae (subditus) excusat a peccato, licet in veritate sit malum.

Az. t. 1 l. 2 c. 19 q. 9 qui ait, hanc sententiam esse omnium communì consensione receptam, Caj. 2. 2 q. 169 art. 2 ad 4 dub. 2. . 2 c. 41 n. 73. Sylvius q. 19 ar. 5. Cabass. T. J. l. 1 c. 21 n. 17. 89 q. 5 R. 2. 3. punct. 13 n. 3. p. 101 n. 161. Holz, from the Preciae, part I, tome 1, page 479, note 590.

Ebel t. 2 p. 598 Lib. IV. concerning particular precepts, etc., 620 n. 612. . 15 c. 6 n. 68. 6 c. 3 ex n. 3 with S. Bonaventure. Saint Abb. Mire. Soto, Arm. et innumeris aliis.

It is proved from 8 and 10, where it stands thus: If you have perceived that a judgment is difficult and ambiguous for you... you shall do whatever they say who are in charge of the place which Bernard has chosen from 12: Whatever man has commanded in the place of God, although it be not certain to displease God, ought by no means to be received thus, if God should command. For indeed the Lord Christ himself said: He who hears

you, hears me. Luke 10. 16. And the Apostle [writes] in Hebrews 13:17. Obey your supervisors and submit to them.

Item in constitutions. Society. JESU sic Ignatius praescriptis: Obediendum in omnibus, ubi pecca tum non cernitur, id est (ut in Declaratione) in quibus nullum manifestum est peccatum. Thus equally shall it be held in the Kingdom. FF.

Minorum c. 10 apud : Obedientia in omnibus, quae non sunt contraria Anima, et Regula. The same [person] taught B. Ubertus in lib. de Erud. Rel. c. 1 ubi: Nisi aperte sit malum, quod praecipitur, accipiendum est, et si d deo praeciperetur. The same applies to B.

Dionysius scripsit: In dubiis, an sit contrà praeceptum Dei, standum est praecepto Pra- dati; quid, etsi sit contrà Deum, attamen propter obedientiae bonum non peccat subditus. And the same [person] previously taught: It is proven by a second reason, because the Superior has possession of giving orders; hence he should not be deprived of it, unless it be certain that what is commanded is illicit. It is confirmed, because if in all doubts concerning the goodness of the action commanded, subjects could extricate themselves from the yoke of obedience, then certainly no community would be able to be governed and to endure. Hereby D. Bernardus (in I de gratia et arbore) justly reprimands Religious concerning precepts. Superiorum disutientes, dicens: Porro imperfecti cordis, et infirmae prorsus voluntatis judicium est, horere ad singula, quae injunguntur, et exigere de quibusque rationem: quoniam expedit profecto magis, omnino non fuisse, quum nostros permanere; nam qui voluerunt sui esse, utique sicut discipuli bonum et malum, et facti sunt non solum sui, sed etiam Diaboli.

Neither is this rule observed: for it is better for the subject in doubt to have possession; for since he himself has already subjected himself to the power of the Prelate, in doubt possession stands for the Superior, having the right to command. Here is brought forward I. Which is, si diversae adsint opiniones probabiles circa rem praeceptam, an sit licita vel non subditus teneatur obedire ut communiter docent c n 6 et l i c 3 n 6. Az. l. c. et l. c. 6 n. 6 q cum Val. Push.

Lay. Wilt. Salas, Cord. and Prad. (contra, qui traducunt i Nec obstat dicere, quod Superior non habeat jus imperandi, quod 'illicitum est, et ideo, cum præcipit rem probabiliter illicitam, probabiliter nequeat eam præcipere; ergo probabiliter nec teneatur subditus tunc obedire. For this argument fails on two counts: the argument would hold good if the Prelate were to

command that thing as probably illicit; but we say that in that case he commands that thing not as probably illicit, but as probably licit: and therefore he commands lawfully, and consequently the subject is bound to obey. Furthermore, although it is probable that the Prelate cannot command that thing at that time because it is probabiliter illicita, this does not make it probable that the subject is not bound to obey; for even if the Superior does not have the right to command what is certainly unjust, he nevertheless has the right to command what is probabiliter just or what is not certain to be unjust; hence, the subject is bound to obey him in everything that is either probabiliter just or which cannot be established as unjust.

Here rightly 400 Lib. IV. From the precepts particular, etc., it is deduced that the subject is bound to obey the Prelate, even if the precept seems probabiliùs illicit to him (whatever may be said in Sal. n. 70: since they themselves in n. 66 clearly asserted the opposite by saying that the Prelate has the right to command, which either is probably just or not certainly unjust), Reason, because the jus possessionis, which the Superior possesses, prevails over every contrary opinion, which does not have convincing reasons founding moral certainty, according to what is said in Conscience with Lugo, and others, as they hold in the present case Bus. l. 1 p. 6 vers. 5 Superiori, and 1 tr. 1 c. 5 § 2 n. 11 cum Vasq. Corduba, et Miranda; et idem docet .6 c.3 n.6 et l.1 c.10 n.9, ubi non dubitavit se retractare à diversa opinione, quam olim tenuerat de Matrimonio l.2 D.41 n.10. It is stated in IL that even though the subject has a single probable opinion that the commanded thing is illicit and no probity appears to him regarding its honesty, he is still bound to obey, as they say in the same chapter paragraph 13 number 4 and in the same chapter number 6 with Valent.

Table. Sayr. Sala; Rossell. et Corduba. Reason, because, since it is not certain that the action is disgraceful, the Prelate has the right to command all things which appear licit to himself, even though they may appear illicit to the subject, when the Prelate (as we have said) is not to be deprived of his right to command unless it is established that the thing commanded is illicit; and this is evident from c. Inquisitionis, de Sen. From the commutation where it was deemed just that a wife, having merely probability and not certainty regarding the nullity of her marriage, be held to render debt to another who still possesses the right to sue.

This however, which has been said concerning the doubt of the honesty of a precept, must also be said in the case of a doubt whether the precept exceeds the power of the prelate, or is above the Rule, as taught by 6c. 3 n. 3 and Valent. Card. However, commonly the aforementioned Doctors

limit their said judgment, and they state that a subject is not bound to obey if the matter is extremely difficult and troublesome; because then difficulty of work together with a probable opinion that the thing commanded is illicit, or that the command exceeds the superior's authority, prevails over such possession. Thus Bus. as above, and 2 c. 41 n. 73. 3. punct. 14 n. 16 ac Hurtad. Prad. Pelliz. et communi.

Limiting 2. When a subject, by obeying, would expose himself or another to a grave inconvenience in life, reputation, honor, or goods; thus 479 n. 590. 138. 1 de n. 69 with Soto; Bann. Hurt, et Pell. Reason, because a subject is not then bound by law to deprive himself of his certain right with regard to such important goods, lest he cause the Superior to lose his possession, which in that case is somewhat uncertain. But there is doubt whether the subject is bound to obey when he probabilistically believes that the precept has not been imposed or has been abrogated?

Resp. negativè, ut communiter docent 6 c. 5 n. 7 et etc. Imò dicendum, quod in dubio de impositione praecepti nulla sit obligatio parendi nisi constet illud fiasse impositum. It is doubted whether the subject is bound to obey if the doubt concerns whether the one who issues the command is a legitimate Superior. They deny, according to Tr. 15 c. 6 n. 64, because (as they say) in that case there is even a doubt regarding the possession of the Superior. But it is more correctly said according to Cabass, l. 1 c. 31 n. 17. 89. . 6 c. 3 n. 20, that a subject is bound then to obey, if he commonly holds that one as superior; because, with such a common estimation standing from one side, and probability that himself is legitimate Superior from another, the Church supplies jurisdiction therefrom, ex l. Barbarius. Decretales de Officio.

Preface. Therefore: in such a case it will not be merely probable, but certain that he is the Superior. Otherwise; if it is generally not considered that such a case exists, because (as Cabassus says in loco citato) then in doubt the better condition is that of the subject who possesses his own liberty. Seek. II.

The Religious solemnly vowed unless contrary to his superior. 26 402 Lib. IV. Of Value. Angel. Rosell, quià by vow of obedience rendered himself willing: But more correctly, . 1.

QUESTION 4 and others say that a Religious can properly vow what does not contradict the Rule or the precept of the Superior, nor owe him such obedience. Wherefore they can emit personal vows, or concerning things commanded by precept, and even those which are not precepts of the

Rule, if they are not forbidden by the Rule. Nevertheless, the Superior can prohibit the subject from making vows without consultation, as they say in c. ajunt: a S. Fausto; Who probably says that vows issued otherwise are valid, not obstructed by this precept, since they are unconditionally pleasing to God, even though the manner may not please Him. It is asked thirdly. Whether a Religious is bound to obey the one giving a precept, that he keep secret what has been committed to him in confidence?

Resp. He is bound to obey, if otherwise damage would occur to the monastery, or to others through a third party, or even directly to the Prelate; because then, even without a command, there arises an obligation to manifest it, which is hindered inordinately by the secret commission. Thus teaches St. Thomas Aquinas, 2nd Part of the Second Section, Question 70, Article 1, Answer 2. S. Ant. . etc: But otherwise, if there be no damage predicted; for then there arises the obligation to observe natural faith, which cannot be removed by a precept from the Prelate, as S. Thom. ibid. In the words of the Holy Doctor: Sometimes indeed there are such things.... which a man is bound to manifest, for instance if they pertain to the corruption of spiritual multitude, or corporal, or in grievous harm to some person..... What one is bound to proclaim, whether by testifying or denouncing..... But sometimes there are such things which one is not bound to promote; hence one can be obligated thereby, because they are committed to him secretly: and then in no way is one bound to divulge them, even by the command of a Superior. Unus autem Religiosus potest revelare secretum commissum ad vitandum damnum proprium?

Alexandri Roncagliae et aliorum plu- rum negant, quos retulimus l. 3. n. 971 v. But moreover. Chapter I. Doubt. IV. On the State of Religious Life.

Here is the reward of this work to see concerning the obligation of all these vows, whether Religious, if some notable unforeseen circumstance supervenes, they are neutered with respect to the vows made in Profession? Speaking concerning simple vows (in the treatise on Vow, book 3, note 226), we said that it is sufficiently probable an opinion, namely, that there is no obligation to fulfill vows if a notable circumstance supervenes which one would not have made a vow had he foreseen; except for the simple vows of chastity and religion. For although Bonac says in his treatise, book 2, decision 4, question 2, page 1, note 26 and decision 15, chapter 6, note 32, that one is not bound to such vows if he makes them moved by the stimuli of the flesh with evident danger of incontinence, given the experience of lapses, if afterwards the stimuli and dangers persist (for they say), in such a case such vows are not for the better good; yet they more correctly say in chapter 4, note 9, and in the treatise on Matrimony, book 7. D. 1 1. n. 8. Pont. de Matr. l. 6 c. 12 n. 2. . 15 de Stat.

Laymen, speaking about solemn vows emitted in religious profession, or in reception of sacred orders, must absolutely adhere to this. When there is a common decree stating that no vow previously made can be rendered invalid by any notable circumstance occurring, even if not foreseen, provided the circumstance does not revolve around the substance of the vows.

Thus Sporer on Vows, c. 3, n. 6, from Matr. l. 10, D. 9, n. 18, 4 tr. 4, c. 7, n. 5, p. 411. Pichler l. 3 c. 5. And they say the same thing specifically regarding the solemn vow of chastity 4 c. 8 n. 10 with Val. et Ratio, because in such a case a Religious or Priest is not considered as an individual person, to whom it would be more fitting then not to be bound by a vow; but rather as part and member of the Community of the Church, who ought to subordinate his own private good to the common good; for otherwise countless inconveniences, scandals, and disturbances with great damage to the Christian Republic would undoubtedly follow. And it is altogether to be said for the same reason of the common good, concerning vows which are made by men or women in certain Congregations; especially if the vow of Perseverance is added, as happens in Venice. Congregatione Patrum.

Missionis S. Vincentii a Paulo, et in nostra minima Congregatione SS. Redeemer: Because (as we said in book 3 verse. But here a burdensome contract arises for both parties obligatory; for no circumstance, whether unforeseen or even unanticipated, can render burdensome contracts irrevocable; whence, as the Congregation cannot relinquish the Oblatum on account of circumstances supervening (excepting circumstances of crime), so neither can the Oblatus abandon the Congregation. Here it is asked whether the permission granted by a lower Prelate, which has been denied by the higher authority, is valid? They probably affirm. Page 474, note 610, and Croix, book 4, note 116, with Pelliz.

Reason, because the Superior, by denying permission, in no way renders the inferior's power irritable. On the contrary, I think it should be said thus: if the Superior positively prohibits the subject from carrying out the petitioned matter, then the inferior cannot dispense with the mandate of the Superior. What if the Superior prohibits the inferior from granting permission for any matter? Probably still they say AA. Above cited, this: if the inferior grants a license, it is validly granted (even though illicitly); otherwise, if the superior had declared such a license to be illicit.

Moreover, it should be noted here what is found in Trent (Session 25): Regulars are not permitted to depart from their convents, even under the pretext of approaching their superiors; unless they have been sent or called

by them. Regarding however the Obedience of Nuns, it is previously noted, that by reason of their vows Nuns are bound to obey me, ## Chapter I. Doubt. IV. On the State of Religious Life.

To the Supreme Pontiff. II. The bishop of the place, if he be not exempt; but if he be exempt, to the prelate of the Order, in the same manner as their religious obey those. Nevertheless, even those who are exempt are bound to obey the Bishop in those matters in which he acts as a Delegate of the Apostolic See, so far as regards the observance of enclosure. II.

They are bound to obey the Abbess in those matters which pertain to the Rule. But concerning this obedience which nuns owe both to the Bishop and to the Abbess, it is necessary to note and discuss another kind. As regards the obedience due to the Abbess, I. There arises a very significant question here, whether an Abbess can command Moniales to obey her in virtue of obedience, obliging them in conscience; The first opinion denies this with Soto, Caram, etc., because, as they say, the Abbess is not capable of exercising spiritual jurisdiction, but only herself can command what pertains to the economic governance of the monastery; The second opinion affirms this; which is held by Pasquali and others, and some other authors mentioned there; and to this the latter adheres. Reason, because through the Vow of Obedience, nuns are bound to obey all their legitimate Superiors.

The Abbess, however, and truly is called a legitimate Superior in her own Monastery; for since the Pontiff approves the Religion, he likewise approves at the same time among the Moniales the order of superiority and subjection: otherwise how could the Monastery and the observance of the Rule be kept? Wherefore, although the Abbess cannot exercise jurisdiction, as is certain and common knowledge, she nevertheless can, at least as a Minister, demand obedience through the promised vow concerning things that are commanded by the Rule or that conduce to the profit of the nuns according to the Rule. And the second opinion seems to me absolutely more probable, since such obedience appears absolutely necessary for sustaining the observance of the Rule: for such is the universal practice in monasteries observing the Rule. II. A question arises: whether an Abbess can dispense with her Moniales regarding the Rules or vows?

It is certain that an Abbess cannot authoritatively dispense from what observances are required by the Religion, namely breaking fasts for eating meats, etc., against the Rule; but she can properly dispense from such matters at the commission of the Prelate, as Lezan notes. Or she herself can at some time declare that she does not consider herself bound by the

fast or some other precept. Concerning the vows of Moniales, it is equally certain that the Abbess cannot dispense with them or commute them in any way as can do the Bishop or Prelate of the Rule if they are exempted; but the Doctors generally agree that, by reason of the dominative power which she has over her subjects through the vow of Obedience, as Parents have over their children, she may vitiate their vows, whether supererogatory matters or regarding the Rules, as teach Sylvest. c. quæst. 5. And this, even if the vow be that of passing over to a stricter Rule; as Pasqu. holds and adheres to . contra . etc. 54. It is doubted, whether she may irritate the vow of a Monial emitted with her consent?

He denies Richard. But they commonly affirm. Sylvius et Armillarius, quibus adhaereo cum q. 6 et; alias si sine causa peccabit, sed probabiliter non plus quam veuialiter. See what is said in Vote n. 239 v. Certum. 55 Vota novitiarum non potest abbatis sa irritare, sed tantum suspendere eorum executionem, si probationi officiant, ut sic vota non impediant novitiorum probacionem.

If however vows have been made by the Novitiate while it was still under the power of the Parents, then it is said, c. q. 7, that the Abbot can irritate them, since at that time he succeeds to the same dominative power over the Novitiate. As regards, however, the obedience due from nuns to the Bishop, other matters should also be noted. Note I. that nuns are not bound to obey. Regarding obedience due from Moniales to the Bishop, it should be noted that Moniales are not bound to obey in matters concerning the election of Officials of the Monastery, since such election wholly pertains to the Moniales themselves; according to the Decree of the Sacred Congregation at Pasqual, those elected Officials are to be removed at the discretion of those who have chosen them. It is noted that the Bishop may suspend the Abbess from her Office in a case where she does not give notice of the profession to be made by the Novitiate according to canon 17. Notandum III, quod Episcopus possit numerum Monialium statuere, ut omnes admissae commodè sustentari possint.

And this also applies to exempt monasteries: Nevertheless, even in these, the Superiors of the Order should be involved. Thus. Session 18, Chapter 25, Canon 3 and Constitution. Saint Pius. V and others Declare. S.C. Notandum IV., quod Episcopus singulis annis tenatur visitare Monasteria Monialium sibi subjecta per seipsum vel Vicarium cum suo speciali mandato.

Monasteria autem, quae immediate sunt subjecta Pontifici, etiam ab Episcopo visitanda sunt, sed cum Apostolica authoritate; Exempta vero sunt visitanda a Praefato Capi-tule, secundum n. 7 de 102. And presuming

to impede, after three admonitions, they ipso facto incur excommunication, as stated by St. Clement above. See III, Notandum V., that in the act of Visitation of Monasteries, when interrogated by the Bishop or by a Prelate of the Order, you must openly disclose the truth concerning the observances of the Rule, as stated by Alexander in loco citato, question 5: even if transgressions are slight, because from these begins the regular relaxation of the entire Rule. They nevertheless excuse Lezan. and . Nuns are to manifest truth, I.

If the crime is deemed amended: From which it follows that they are not to be held responsible for revealing another's crime committed many years ago (for example, three years, as Mascardus supposes), because it is already considered amended. And for the same reason, correction is always to be preceded by official denunciation; but on this see the explanation in no. 249. II. Monastics are excused if the crime is hidden; and no preceding infamy has occurred, nor any evident indication. III Si constet, prælatum nullum remedium fore adhibitu-rum; vel si sciant moniales crimen jam denuntiâse alias, à quibus ipsæ illud audierunt, quà ad opus inutile nemo tenetur.

IV. If the manifestation regards one's own harm. V. If a crime is known under a natural secret; yet it is excused if the crime be the cause of common harm. But this shall be more fully discussed below according to no. 246. 53.

Concerning confessors approved by the Bishop for monasteries; see under 7, n. 571. But let another utility be noted here, namely concerning the Election of Abbess. II. As regards the Privileges of Moniales and Regulars. NOTABLE IS THE FACT THAT EX 25 OF ALIA ELECTION IS NULL, AS STATED IN DECLAR.

The Sacred College at ; but Passerinus more probably thinks otherwise. However, in a case where there is lacking in the monastery one who has such an age according to the same profession: or another from another monastery of the same order. Of the Order; and even of a foreign Order, but this not except with the consent of the S. C., as he notes. But if there already be in the Monastery a Monialis forty years of age (unless she really be unfit), it is not fitting to elect another, though more capable, unless by dispensation of the S. C., according to c. q. 2. ex Decr. S. C. Et hic notandum, quod, sicut Abbatissæ, sic et Procurator Monasterii debeat; quocumque triennio mutari, ex alio Decr. S. C. at section 2 question 13.

Note II. that illegitimate ones, infamous ones, and corrupt ones, such as

widows, cannot be elected as Abbess; ex Decl. S. C. nisi corruptio fuerit occultata. See [the text] chapter 9; likewise neither blind nor deaf, according to chapter Hinc § Cæcus de apud. Chapter I. Doubt.

Four. On the State of Religious... 4og It is to be noted III that for the election of an Abbess, converses are not admitted, but only professed choristers, according to the Law. . c. 9: § 2 q. r. Notand. IV. That if any Religious woman is in bed sick, her vow should also be received either by means of a document sealed with a seal, or by two Religious women designated by the electress. Thus from Alexander, ibid., q. 2, ex Decret. S. C. Notand.

V. Nam, si elecciónem propter discordiam non compleatur, non possit Prælatus præsidens dare suum suffragium, ut ex pluribus Decret. S. C. Sed bene possit præfigere tempus ad electionem, quo elapso, ipse abbatis sibi deputabit. Ita pluries declaravit S. C. apud Alex. q. 3. Notandum est, VI quod monialis, qua jam suam dedit vocem, nequeat amplius illam revocare, communis. DD.

When however the choice is made through scrutiny, it is decreed that votes be secretly presented to the Notary and four or five other assistants; otherwise the election is null, as say Garcia, Even if done otherwise out of ignorance, as says the Sacred Congregation. For the sufficiency of the election consists in the greater part of the votes, as q. 6 contra .. Not. VII. that in the election of the Abbess, as it is prescribed by l. Prelates who preside should be outside the Cloister. They nevertheless think Pasqual. Desirable and according to 15), prelates can enter the cloisters.

Therefore this must be noted: in monasteries, it is not the bishop who presides over those subject to the Apostolic See; but in exempt ones, the regular prelate together with the bishop presides according to Const. . However, the bishop merely assists there, and does not receive vows; S. C. q. 8. Once the election has been carried out, unless some obstacle prevents it, the confirmation of the election ought to be made in the same place by the presiding prelate, namely by the bishop, or by a regular prelate in exempt monasteries, or by the Apostolic See if that monastery is immediately subject thereto. See And this confirmation can also be made by Lio Lib. IV. Of (against .

It also ought to be blessed in the exterior Church by the Bishop, or Regular Prelate within a year, otherwise it would be deprived of its office; Such a blessing however can be entrusted to another, even to a simple Priest; Pasqual. et al. 8. But in all these matters, as noted in . 8, attention must be

given to the custom of monasteries. Not. VIII. That abbots may be elected for a period of three years, or for individual years, but not beyond three years; otherwise, the election is null.

And furthermore, a titular Abbess must remain vacant for a period of three years, according to Consti. He explains further, etc., that she cannot be elected to the office of Vicar if by chance a new Abbess should fail, because the Pontiff has decreed that the previous Abbess shall lack all authority for a period of three years. He says moreover that in communities of Oblatas it is well to elect a perpetual Superior, because the Bull speaks only of true professed nuns. Another thing he adds here. ## II. ON THE PRIVILEGES OF MONKS AND RELIGIOUS.

Here it is advisable to note regarding the privileges of Regulars, that all Regular Orders share in the privileges of other Orders, whether Mendicant or non-Mendicant, as can be seen from the privileges granted and asserted by Sabn. Chapter 18 out of ninety with reading and common. Hence to be noted I. that nuns rejoice in the same privileges (of which they are capable) as religious of the same order; Thus it is said. Antonius... Ratio, quia, cum ipse vivant sub eadem Regula, sunt pars Ordinis, et ideo Ordinis privilegiis merito gaudere debent. And this, even though it is expressed in the Privilege as a concession to men or males; and although Moniales are subject to the Bishop according to what they hold. . c. n. q2 cum. et. 10 q. 2: who notes with others q. 3, that they should also enjoy the privileges of other Orders communicated to their own Order.

From this it is inferred I. cum q. 5: 6 that an Abbot can dispense in fastings, Office, etc., according to the privileges of his Order granted to Prelates; because although the Abbess herself cannot per se dispense for a lack of spiritual authority, she nevertheless can have this power conferred upon her by a commission presumed to be given to her once she has been elected Abbess. It is inferred II. Moniales episcopo subjectas bene posse uti privilegio, v.g., recipiendi absolutionem a proprio episcopo, quando cuiusque regulari privilegium est concessum; secus tamen, si facultas absolvendi non sit regularibus concessa, sed tantum praelato illius ordinis; ita q. 4. It is stated III. when, according to chapter 10, those who are subject by vow, with closed doors, without bells, and excluding by name those who have been interdicted or have caused an interdict, as was granted in the chapter "Alma Mater," under number 48. Henr.

Sayr. To receive the Extreme Unction, as there. April. IV. And the same thing he granted was granted by Eug.

IV for Beati or Tertiarii: Excepting nevertheless those who are specially interdicted always, as above. . 7 etc. And they can also publicly celebrate on many Feasts, such as Pasch, Pentecostes, Nativity. Sovereign Lord, Amen. B. V. Mary: Also SS.

Sacraments and Octaves, V. The sanctuary titular church, and the saints proper to the order of Lio Lib. IV. Of (against . It also ought to be blessed in the exterior Church by the Bishop, or Regular Prelate within a year, otherwise it would be deprived of its office; but such a blessing can be entrusted to another, even to a simple Priest; Pasqual. et al. 8.

But in all these, as they note. Not. VIII. That abbots may be elected for a period of three years, or even for single years, but not beyond three years; otherwise, the election is null. Furthermore, the office of abbot must remain vacant for a period of three years, according to the Constitution and Exposition. Therefore, he cannot be elected to the vicarship if by chance there is a shortage of abbots, because the Pontiff has decreed that the previous abbot should entirely lack authority for a full three-year term.

He says moreover that in perpetual Oblate Colleges it is well to be able to elect a Superior perpetually, because the Bulls speak only of true professed Moniales. Another thing it is expedient to add here. ## II. ON THE PRIVILEGES OF MONASTIC SISTERS AND RELIGIOUS WOMEN. Here it is advisable to note regarding the privileges of Regulars, that all Regular Orders share in the privileges of other Orders, whether Mendicant or non-Mendicant, as can be seen from the privileges granted and asserted by Sabn. Chapter 18 out of ninety with reading and common.

Hence to be noted I. that nuns rejoice in the same privileges (of which they are capable) as religious of the same order; Thus it is said. Antonius... Ratio, quia cum ipse vivant sub eadem Regula, sunt pars Ordinis, et ideo Ordinis privilegiis merito gaudere debent. And this, even though it is expressed in the Privilege as a concession to men or males; and although Moniales are subject to the Bishop according to what is held, c.n. q2 cum et 2: qui notat cum aliis q. 3, they should also enjoy privileges communicated to their Order from other Orders. From this it is inferred I. q. 5, 6: that an Abbot can dispense from fasts, from the Office, etc., according to the privileges of his Order granted to the Prelates; because although the Abbot himself cannot per se dispense on account of the defect in spiritual authority, yet this can be done by a Prelate who is presumed to have been entrusted with such commission as soon as he has been elected Abbot. It is inferred.

Moniales episcopo subjectas bene posse uti privilegio, v.g., recipiendi absolutionem a proprio episcopo, quando cuiusque regulari privilegium est concessum; secus tamen, si facultas absolvendi non sit regularibus concessa, sed tantum praelato illius ordinis; ita q. 4. It is stated III. according to canon 10 de, that all Regulars of either sex who are temporally interdicted by the General can perform Divine Office in their monasteries, as they recite Offices and celebrate Masses, etc., but with subdued voices, closed doors, without bells, and excluding those named specifically from the interdict or those for whom the cause of the interdict was given, just as it was granted in the chapter Alma Mater, under number 48. Henr. Sayr. To receive the Extreme Unction, as there.

April. IV. And the same thing he granted was granted by Eug. IV for Beati or Tertiarii: Excepting nevertheless those who are specially interdicted always, as above. . 7 etc. And they can also publicly celebrate on many Feasts, such as Pasch, Pentecostes, Nativity. Sovereign Lord, Amen.

B. V. Mary: Also SS. Sacraments and Octaves, V. The titular church of saints, and the proper order of saints A s Lib.

IV. Of private prayers, etc. Likewise on the Feasts of Circumcision, Epiphany, and Saints. Of the Trinity, of the Apostles, of St. John. Baptiste, S. Lucie, S. Marci, Omnium Sanctorum, Omnium Defunctorum; Vida 61, 62 et 64. It does not hinder to say that what chapter 25 of the Decretals, canon 12, previously stated: Interdicts are also to be observed by Regulars in their own churches: For chapters 10 and 8 and 10 likely respond with Pey- rin.

Sorb. etc. thought that the Council intended merely to restrain some Brothers who pretended privileges from null manner interdicts emanating from Ordinaries to be observed; but not to abrogate the privilege granted to Religious, even Clerics, in the said document of the Alma Mater for the common good, as was stated above at the time of Interdiction. Note II. that in the monastic churches persons of the laity cannot be buried unless they have the right to burial there, or unless a concession is obtained from the Sacred Congregation. The Holy See having decreed on the 10th and then the Offices for the dead are to be performed either from the Confessional of the Monastery, or from the Regulars of the same Order if they are exempted, not however by the Clergy, as stated in the 11th. Notandum III. Regarding the Divine Office, many privileges were granted to Regulars.

Clement VII has granted permission to the Clarisses Monastics to use the privilege referred to in question 13. (At Salamanca.) Tr. 16 de Idem

Clemens concessit omnibus Regularibus infirmis vel eis qui infirmis inserviunt ut possint satisfacere per 7 vel 6 Psalmos à Superiore assignandos cum 7. Father, and by Bull X he conceded to Moniales of Saint Clare, and thence to others through communication, that they may be able to fulfill the Office of laics, unless they recite Canonical Hours, for any reasonable cause, namely if a Moniale is scrupulous, or is extraordinarily fatigued, or occupied with useful ministries. Hereafter. c. n. 62. And they note there in Salamanca that this privilege can be used on its own, without permission from the Superiors.

They note 2. n. 6r. with Pell., that if the Moniales perhaps culpably omit to say the lay Office, they will not sin gravely, because then they are as laics who are not bound under mortal penalty for such recitation. They note 3. that all Religious who have communication of privileges may use this privilege by itself, without license from Superiors; because according to common opinion, just as nuns are able to use religious privileges, so conversely. And for this reason it is sufficient for them if they preach during Lent (although not daily) with great labor; if a multitude of penitents should gather, or if they have come from their journey relaxed: their preaching will suffice: Likewise, if they are readers or students who spend the greater part of the day in the study of Sacred Scripture or of the Saints. Canons, or of Scholastic Theology, or of Moral Theology. Thus. n. 56, 57 et 63 cum Pasq. etc. Item Martin.

V. Allowed the monks that he would allow the Minor Brothers to anticipate lengthy Offices and reserve shorter ones for days in which they are less occupied with sermons, confessions, and study, as Tambur thinks. He allowed Regulars the privilege of reciting private mental prayer Office: and although readers have to read, this privilege was revoked by Gregory. XV. et Urban. VIII. qui revocarunt omnia privilegia vivae vocis Oraculo concessa, prout tale fuit hoc privilegium, ut communiter DD. asserunt; Attamen probabilius contra dicunt . . Mis. Pius V. But this, which was confirmed by Pope Saint Pius through a Bull, as reported by Pell and At Oracula vivae vocis, which are declarations of common law, or Bulls, then scarcely at all revoked, according to what all affirm, as they testify in n. 53.

But that which Peyrin objects, namely, that the said privilege has been granted to the highest extent for that part which is secretly stated in the public Office or in the Mass, as the words of the Privilege relate, c. n. 5 i., does not at all hinder it, for there it is added at the end thus: And that he who merely says the Office by itself may do the same thing in the same manner; since the verbal recitation is especially intended so that others may understand it. Therefore (rightly they argue), here it is to be noted

regarding all privileges of religious orders, that a superior may limit justly some privilege of the subjects on account of just cause, because such things are always understood as granted so as not to prejudice the dominative power which the superior has over the subjects by virtue of the vow of obedience. Poterit etiam Abbas moderari poenitentiam a Praelato Moniali impositam, si adsit juxta causam, et accessus ad Superiorem non pateat. Ita 28. Finally, it must be noted that according to the Bull of Paul V, §8, all Regulars who have made profession (just as Ordinary locum-holders) enjoy indulgences granted to anyone whatsoever Religious Order, as noted in 18. ## DUBIUM V. ## Who can enter Religion? Those who cannot, or are forbidden to enter Religion?: In what necessity do the prohibition of parents prevent children from becoming Religious?

When sons already professed are bound to leave Religion in order to assist their parents? '68 Whether children sin by entering religion against or without the knowledge of their parents? '69 Quando prohibeantur Parentes ne Religionem intrent ob necessitatem filiorum? 70 An licet relinquere Fratres aut Sorores in necessitate? 91 An debitis gravati possint Religionem ingredi? What if they are already Professed? When those desiring Religion are compelled to enter or excused from entering? When is it licit to transfer to a more lenient or stricter Religion? Can Parishes enter Religion in opposition to the Bishop? An Episcopus possit impedire Clericos a.

Religion? 96. And when may Bishops desert their Churches, or be permitted to do so? 97 Do Parents gravely sin by diverting their children from Religion? 98 And, and in what manner will anyone who is called to Religion sin if he neglects to fulfill his vocation? Resp. 11 Omnes illi et soli possunt ingredi religionem qui sunt sui juris nec aliis obstricti: qui vero aliis obstructi sunt non possunt sine eorum consensu. 2 c. 41 d. 3. » Wherefore infants cannot enter Religion, because they are subject to parents or tutors as regards the disposition of life. 2. Nor children, if parents without them cannot provide sustenance. . 4t. 5 c. 4 n. i et supra 1. 3 t. 3 c. 2. d. i, 3.

Neither servants without the consent of their masters. Neither he who defiled a virgin under the mission of matrimony. 5. Neither he who is not remitting his creditors while remaining in this world may within a few years remit. St. Th. however, Sylvius Fumeus, v. Religion, et alii putant illum posse bona praesentiae cedae creditoribus; quia persona hominis liberi non est pro pecunia obligata. 6.

Neither the Bishop, without the consent of the Pope to whom he has bound himself by vow; except that he is obstructed in his own Church as a husband is obstructed from his wife. Neither spouses after the

consummation of marriage, unless the husband had consummated by force, before the completion of two months; these are conceded to them by law, or unless the other spouse had committed adultery: for then the innocent one could enter in. Here it is to be noted L. That which, if a son should profess Religioin by renouncing: Parents in necessitate, the profession nevertheless remains validly made. It must be noted II that, if a son, remaining in the world, in no way can provide relief to his parents out of necessity, he may nevertheless lawfully enter religion.

Note III. that, if a son cannot remain in the world without grave danger of falling into some serious sin, even licitly may he enter Religion, whatever necessity the parents may labor under, because the temporal welfare of the parents ought indeed to be preferred to the spiritual salvation of the son. Thus St. Thomas in his Quodlibet 10, article 9, where he says: Either this person who has the purpose of entering Religion sees that he cannot live in the world without committing mortal sin, or without doing so easily; If he fears the danger of committing a mortal sin, since he is more bound to provide for the salvation of his own Soul, he is not bound to remain in the world out of a temporal necessity of his Parents. The Holy Doctor follows this in 4 c. 20 n. 11. . 16 D. 1 p. 7 § 5 n. 7 et . 15 de Statu l. c., si periculum sit proximum, et tale ut a filio, manendo in seculo, moraliter vitari non possit. But now it is asked, what necessity on the part of Parents prohibits Children from entering Religion? And conversely, what necessity prevents the parents from preventing their children from becoming religious?

Thus he responds and teaches S. Thom. 2. 2 q. 18q art. 6 when speaking of children: to parents who are in necessity such that it is not otherwise easily provided for them, it is not permitted to children... to enter Religion. In like manner he speaks if the parents do not greatly lack for the obedience of their children. Hence they say 4 c. 20 Iess. l. 2 c. 41 n. 34 c. 3 n. 53: when Thomas says in Quod. l. 10 art. gubi: If without their obedience the parents cannot in any way live, thus it is held by Cap. I. Doubt. V.

On the State of Religious Life: To serve and other works of perfection are omitted. Si vero sine ejus obsequio quidquid potest non honorifice sustentari potest, propter hoc opera perfectionis dimittendi necesse est. This must be said concerning children who are not yet devoted to Religion; but there is great doubt whether a son pressed by necessity should be held bound to leave his profession in order to assist his parents? In necessity extreme certain is, him to hold; yet they say nevertheless. Precepto c. unit. n. 11, hoc non admittitur, si filius ex Claustrò posset subvenire, quin egredìatur; nec si Patris necessitatis non sit evidens et Praeclusus licentiam

negat, judicans necessitatem non esse talem, quia in dubio standum est judicio Superioris.

If a greater doubt exists, if the necessity of the Parents is evident, but only a grave one? There is a triple opinion: The first says that the son should be held to leave, because by his vow the natural obligation of the son towards his parents is not extinguished. Thus Henry of Poitiers, in his Commentary on the Sentences, etc., as cited above, n. 12. The second opinion distinguishes and says that if the necessity of the Parents precedes Profession, the son is bound to go forth, because the obligation already contracted does not cease through Profession; rather, the Profession follows the necessity. Thus very probably Elb. de 4. cum l. 5 c. 1 n. 9 et ., n. 13.

The third opinion teaches more probatively that in such a case the son is not to be held bound nor able to go forth without permission, whether necessity precedes profession or not. And it is confirmed by St. Thomas Aquinas, 2nd part, 2nd section, question 101, article 4, ad 4, where he says: But he who is already professed in Religion is considered almost as dead to the World; hence, he should not be sustained by the opportunity of his Parents' provision when leaving the Cloister. Nevertheless, it is held, provided that obedience to his Prelate and the state of his Religion be preserved, a medium course should be adopted by which he may assist his own Parents. Hence it is reasoned, because, just as a married son is not bound to forsake his wife and go to his parents to support them; whether necessity precedes marriage or not; for he has already assumed a state in which he is bound more closely to his wife than... 27 §18 Lib. IV.

Regarding particular precedents, etc., to the Parents; thus neither is the Religious bound to desert the Conventual House in order to assist the Parents. Then according to Bus. de 4. Preceptum vide librum tertium nomenclatura 335 infra nomenclatura 5. St. Thom. loc. cit. et Quod l. 3. art. 16 ac Quod l. 10. art. 9. 4 c. 20 n. 17. cum Caj. Saint Anthony.

Arm. cum Fag. Border. Note here incidentally the Decree SS. N. P. Bened. XIV. Beginning with the Pontifical, issued on the 28th day of May in the year 1745, it is noted in its fifty-third article, wherein it is commanded that Regulars residing outside of Cloisters (just as those in civil matters are subject to the Ordinary, who also ought to correct them), it is queried hence, whether children, entering Religion against the will or without knowledge of their Parents, sin? Luther said this, as Bellarmine reports, c. 36, n. 1, that children sin by entering religion without the consent of their parents, since they are bound to obey them in all things.

But this was condemned by the Council. In the Xth chapter of the Toletan Decree, where it was entirely decreed that children should receive permission to embrace Religion without their Parents' consent, provided they have completed the years of puberty: Parents (according to the words of the Council) can give their children over to Religion no longer than until the tenth and fourth part of their age. Hereafter, whether with the will of the Parents, or as a solitary vow of their own devotion, it shall be lawful for the children to assume the cult of Religion. The same were sanctioned by the same, and have been taught by St. Ambrose, St. Jerome, St. Augustine, St. Bernard, St. Thomas, and others with St. John. Chrysost. qui generaliter loquendo scripsit: Cum spiritualem salutem impediunt Parentes, nec cognoscendi quidem sunt.

From this commonly teach: The Doctors [of the Church] do not permit a son to omit Religion as a cause for avoiding scandalizing his parents. Thus S. Thom. 4 D. 38 q. 2 art. 4 quæst. 2 ad 2; D. 6 part. 16 n. 6 cum cap. 1 n. 31; cum Val. 21 cap. 8 n. 87; cum Cano, advertant debere filium aliquautulùm expectare casu eo, donec Parentes moneantur de sua obligatione; imo, si ipse facile eo tuto possit consensum ipsorum obtine-re, par esse ut non discedat sine benedictione Parentum. This, however, is to be understood as we shall see shortly; namely, unless there is a probable danger that the Parents unjustly hinder the execution of his vocation. Therefore, it is by far most likely that in practice sons are excused if, without the knowledge of their parents, they leave the house. It is certain that we are not bound to obey our parents regarding the choice of status, as teaches common sentiment DD. with S. Thomas 2. 2 quaest. 104 art. 5, who says: Servants are not bound to obey their masters, nor children their parents, concerning contracting marriage, or preserving virginity, or any other such matter.

Therefore, there is doubt whether a son is bound to consult his parents in these matters so as to receive from them correct counsel? Regarding the state of matrimony, 4 D. 23 n. 10 with Con., and others, hold that a son is bound to consult his parents, because in such matters they have greater experience than youths. But still concerning marriages to which Thomas has recourse (See on Marriage, Book 6, n. 849). Third opinion: They excuse from grave guilt the son who contracts marriage without informed parents. Whatever, however, this may be regarding this matter, P. Pinamontius correctly says in his Golden Little Book (whose title is Victorious Call, chapter 3) that concerning the election of a religious state neither should one be bound nor does it prove expedient, because children seek the counsel of their parents; for in this they themselves have no experience, and moreover, because the parents, out of regard for their own

convenience, often become enemies, as St. Thomas says in II-II, question 189, article 10, ad 1, speaking of religious vocation: Frequently carnal friends oppose the spiritual progress.

For frequently Parents prefer that their children perish with them, rather than be saved without them, as says St. Bernard. Ep. 111 unde exclamat: O durum Patrem, o sapientiam Matrem! O cruel parents and impious! Not parents, but executioners; whose sorrow is a pledge of the debt, and whose consolation is the death of the child. There. Here thus Porrecta 420 Lib.advertised.

IV. Concerning the precepts particular, etc., according to St. and St. Cyril according to him too, St. Thomas explains that: "He who puts his hand to the plow and looks back is not fit for the kingdom," he says: He looks back who seeks delay in conferring with his neighbors. Therefore, the Saint absolutely observed those who are called, so that they diligently beware lest they receive counsel concerning their vocation from parents: First, indeed, they should be removed from the table of friends on account of this counsel; for it is said: Treat your case with your friend. For kindred by blood are not true friends in this matter, but rather enemies of the man's domestic household. From all these things it is concluded, not only that children who assume religion without consulting their parents sin; but also, speaking strictly according to order, they err very greatly if they make others partakers in their vocation on account of the danger to which they expose themselves, lest they be turned away from it; and this is confirmed by the example of many saints whose withdrawal, whether unknown or against the wishes of their parents, God approved even with miracles and blessed.

The same is held by the learned P. . n. 538, saying: (Si filius sentiat se à Deo vocatum ad statum religiosum, et advertat Parentes id ægrè laturos, atque ex affectu carnali ac futilibus motivis se opposituros, non tenetur eos consulere, quia consulituis aget rem eis celando, juxta illud: An autem peccent graviter Parentes, avertentes filios à Religione, vide infra n. 77. E converso docet S. Thom. eodem loco non licere Parentibus Religionem intrare, non solùm cum filios in necessitate gravi relinquere deberent, sed etiam si omnino prætermittere deberent eorum curam, id est, non præviso (sunt verba S. D.) qualiter educari possint. This nevertheless is understood as they say in S. Thom., d. cap. 3, n. 52, cum. Pelliz. de filiis, non emancipatis, quos Parentes nequeunt in saeculo relinquere, quin eis provideant de necessariis, tam ad sustentationem quam ad instrumentum morum. Accordingly concerning emancipated children, parents, speaking in the ordinary sense, are no longer bound to nourish or educate them, unless the children happen to labor under a grave necessity. Brothers and

sisters, however, it is not permitted to abandon in extreme necessity, but it is permitted in grave necessity; although on account of charity one could delay and even omit the state of Religion to assist brothers gravely indigent.

Si vero votum habeat Religionis, in tali casu non posset differre per longum tempus sine dispensatione. Therefore, in the case of N. 54. when ..., with Bonac. It is questioned hence, whether a debtor, burdened with another's money, can enter Religion? There are three opinions. The first opinion absolutely denies this, because it would be contrary to the natural precept of justice to seek spiritual profit at the expense of the creditor, whom the debtor is bound by justice to repay.

The second opinion, which 4 c. 19 n. 8 holds with Major and c. n. 290, distinguishes and says that if a debtor in this world can reasonably and without great difficulty acquire his own resources within a brief time, so as to be able to pay what he owes or a notable part of the debt; then he is bound to wait. Secondly, if he should be bound to wait for a long time, or if he should not be able to satisfy without notable difficulty. What time is reckoned as brief? Major considers a period of three years: two years. The third opinion, however, absolutely teaches that a debtor can immediately enter the good religion by yielding his goods to a creditor.

They hold this in the Second Part, Question Eighty-Nine, Article Six, Third Objection, and following them are Saints Anthony and Sylvester. Cajetan, chapter 7, number 3, considers it probable that Sa. And this, even if a promised solution had been given with an oath, they would reckon it as null. Saint Anthony. Wood.

Table and Sa. The reason given in St. Thomas is this: On account of money...the person of a free man according to the Law. IV. The Civil Law does not obligate the rights of particulars, etc., but only things: because the person of a free man surpasses all estimation of money; hence he can lawfully enter Religion by exhibiting his own goods, and is not bound to remain in the world that he may procure thereby what is due. He rejected this reasoning. D. N. 7 says: it is not true that the person of the debtor is bound to the creditors; rather, he says, an impoverished and unjust debtor should not be cast into prison by the judge.

But it is replied that the personal obligation imposed upon the debtor no longer rests on the basis of personhood, but on the basis of goods, as taught by St. Thomas in loco citato and as certain authorities assert in cap. 1 n. 224. Wherefore, supposing that in this world the debtor remains and

is potent to acquire goods, it is well that his person be restricted to the acquisition of goods, since he can do so without great detriment to himself; and then the person of the debtor remains obligated, not directly on account of itself, but indirectly on account of the goods to which he has power of acquisition, because being held then, not only to give what he possesses, but also to procure the possibility of payment, since he can acquire them without great detriment to his liberty. Nevertheless, it is to be said, supposing that he wishes to leave the world and dedicate himself entirely to God in religion, where he is rendered powerless for repayment; then he has a free person, so that he may dispose of her for the service of God: and as regards the debt of repayment, it suffices if he yields all his goods to the creditors. Otherwise, if in the world he were held to remain, would be directly and per se obligated a person debitor for the debt money, which is absolutely denied, because the freedom of man exceeds all estimation of money, as it is said above by St. Thomas. Add (and thus the primary reason is answered) that the Natural Precept does not oblige when the debtor cannot satisfy it except with such a great detriment to his liberty and by assuming such a burden in remaining in the world, thereby endangering his eternal salvation; for no one is presumed to will himself to be obligated under such a contract.

And just as one is not bound in the world to keep a marital promise (unless by that bond he has been induced), so too neither is one who has contracted a debt. And this is true even if the debt arises from a fault, as they hold in n. 290, because this debtor is not bound with such an onerous obligation that he should be deprived of a better state of religion. These three opinions are all probable, but the second seems more probable to me; provided that from that brief sojourn in the world no probable danger of falling into sin or losing one's vocation to Religion be imminent. The Doctors agree in saying that the said question should be resolved, since the debts are certain: But if they are uncertain, without doubt the debtor can immediately enter Religion; for, since the obligation to provide uncertain debts to the poor is not from justice and natural law, but from piety and ecclesiastical law, as they prove in c. 4. Lugo, 16 n. 287.

However, it is to be noted that this has a place in natural law. At Sixtus V., per Bullam datam anno 1587, reddit inhabiles ad Religionem debitores, qui dilapidaverunt sua bona, vel qui deponere debent rationes, antequam debita solverint, aut rationes reddiderint; Et licet Clemens inhabilitatem abstulerit, reliquit tamen prohibitionem. This however is understood thus, says Croix l. 3 p. 2 n. 444. with regard to those who otherwise cannot satisfy except by remaining in the world, and from whom it can be hoped for a solution; Also if the debts are great, exceeding their own proper abilities, as it is said in the Bull, heavily burdened with alien goods.

Moreover, Croix says that this does not apply to nuns, nor to knights of military orders, because they are not included under the name of religious persons in odium. Furthermore, neither does it apply to those burdened with uncertain debts; nor to those who have fallen into incapacity through no great fault of their own; for the Bull is only concerned with those who have squandered goods, as Croix notes in his book. IV.

From the Precepts particularibus, etc., ibid., with the Dict. nec pro debitoribus ratione donationis; Croix cum: Verum tamen si quis, gravatus debitis, jam Religionem professus fuerit, valuit Professio, ut Croix d. n. 444. Nor is the Prelate then bound to grant permission for justice's sake that he may labor in order to satisfy, according to Croix n. 450 with Lug. et . Response 2. He who has vowed religion is bound to enter the tenetur according to the following rules. » 1.

He is not bound, nor indeed can he licitly enter the Order in which regular discipline has collapsed: (Intelligence quoad Observantias principaliores, ut c. 2 n. 3.) for this reason, namely on account of the danger of corruption. . 4 t. 5 c. 6 n. 5. » 2. He who has vowed laxity lawfully enters strictness; yet not contrariwise, because he would not fulfill what he promised. What if, however, he professed in regard to a laxer matter? The profession is valid, and he is released from the vow of entering a stricter matter. The reason is that a solemn vow, by which personal tradition is made and the right of religion is acquired in person, derogates from a prior simple vow, by which no such right to a stricter religion was previously acquired. c. ex S. Th. etc. 3.

He who has vowed himself to experience strict Religion, can he commute this into a vow of professing and persevering in a more lax condition? The reason is, because this is better. Laym l. c. ex . Commonly, the Doctors say that if anyone should vow to enter Religion, he is not bound to seek it outside his own Nation or Province: see 15 c. a n. 8. But a woman who has vowed Religion is not bound to seek a Monastery far from her homeland, as they say: 1 tr. 16 p. 3 n. 6. l. 4 c. 16 n. 46.

Tolet, l. 4, c. 17, n. 12 et .c. cum Car. etc. Ratio, quia regulariter non censentur femine, Religionem voventes, ad id se obligare, cum hoc gravem et novam involvat difficultatem: ob quam Tolet et Garc. ibidem excusant etiam viros, votum Religionis habentes. It is inquired about I. Whether one who has vowed Religion and has been legitimately repelled from it once is bound to again enter it if a Monastery afterwards desires to admit him? The first opinion affirms that, and they hold it. II tractatus V caput VI nota IV. D. 4 q. 2 p. 5. § 6 n. 11 et 4 c. 16 n. 71 cum; unde licet illa cedat juri suo nolendo eum admittere, non tamen ideò vovens liberatur a sua

obligatione.

The second opinion, however, denies what they hold, namely Pul. D. 1. p. 3. n. 10. . 2 c. 41 n. 44. et 10 et . 15 c. 2 n. 11 cum Arag. Fausto. Reason, because such a vow, although emitted in honor of God, is nevertheless considered to be made under condition, if it is not rejected; therefore, since the condition is not fulfilled, the obligation is extinguished. Bonaventura objurgat: non reddi votum conditionale nisi explicite apponatur conditio; sed haec objectione videtur non subsistere, nam non rarò in promissionibus conditio implicitè apposita obligat juxta dicta libri 3 num. 720 v.

Notandum. However, in this question it seems more probable to me that one who such a vow has a probable hope of being received as an impostor would not be released from the vow; otherwise, if no probable hope appears, he would be released. It is asked II. He who simply vows Religion, will commit a mortal sin if after entering, he退出了 Önceki Cevap: The first opinion denies this, and this is held by Bonaventure in Decretum D. 4, q. 2, p. 5, § 6, n. 22, and by Soto in Cajetan's Commentary on Book 4, Chapter 16, note 90, and they call it probable in note 23.

Reason, because he who vows Religion is deemed to have vowed it under the condition of permission granted by law; but the law grants permission universally to those entering, so that they may leave Religion for no reason at all according to their own will, as is evident from c. 1 de Regul. in 6. The second, however, is the more probable opinion, which Sanch holds. D.. 1. p. 4 n. 2. . 4 c. 3 n. 2 et n. 24 cum ' unde obstringit etiam ad profitendum, nisi justa adsit causa egressus; puta, si ille inveniat Religionem suis viribus imparem, ut ait. However, it is said when with . 11 c. 12 and other cited authorities according to . This is precisely what D. Thom. 2. 2. q. 189. a 4 teaches in these words: If therefore one who makes a vow intends thereby to bind himself, not merely for the entrance into religion, but also for perpetual remaining, he is bound perpetually to remain: But if he intends thereby to bind himself only for the entrance into religion with the possibility of remaining or not remaining thereafter, it is evident that he is not bound to remain.

If, however, in making the vow he simply thought about entering religion, without considering what he would think about freedom to leave or about remaining permanently, it seems that he is obligated to enter religion according to the common law form, which is that a probationary year be given to those entering; hence, he is not bound perpetually to remain in Religion. However rightly he adverted to the third point: That he who enters in order to depart immediately is not seen as fulfilling his vow,

because himself in making the vow did not intend this; and therefore he is bound to change his purpose, so that at least he may wish to experience whether it will suit him to remain in Religion; but he is not bound to remain perpetually. It is asked III. Whether, if anyone has a vow of journeying and entering Religion with an intention to remain permanently, but is expelled from Religion because he is judged incompetent on account of ignorance, sickness, and similar reasons, he should be released from his vow? Supposing as certain according to 4 c. 16 n. 108 and 25, that if he has acted negligently towards himself, he is bound to exercise moderate diligence in order to correct himself; otherwise he does not become immune from the vow.

It is difficult when he has already applied diligence and yet is repelled, whether he remains free from the vow? The first opinion affirms what . 1 p. 4 n. 10. . 4 c. 4 n. 14 and Garc. apud hold, namely that he who promised himself to be professed, is not deemed to have been obligated to anything else than to apply the ordinary means, which he has already applied, nor does it prevent him from declaring so. The second, however, more probable opinion denies this, and those maintain it: c. n. 82. 4 tr. 5 c. 6 n. 13. D. 4 s. 2 p. 5 §6 n. 22. c. with Pell. Reason, because it is held that he should strive to fulfill that vow so long as there appears a probable hope of fulfilling it; and this medium, neither extraordinary nor extraordinary, but ordinary, is to apply diligence in seeking another Religion; therefore, if expelled from that Religion, he is bound to apply diligence in seeking another.

Seek. IV. Whoever has vowed and will profess himself as such, can he exit Religion for a reason not now urgent but just, namely because he has experienced such a life to be inconvenient? The first opinion affirms this and holds it, citing 17 R. 10 and Sot. Reg. . However, the second true opinion, which they hold, is found in 4 c. 16 n. 8r Bon.

D. 4 p. 5 § 6 n. 22 et Az. modò non sit talis, ut intolerabilis videatur. Reason, because it seems to have willed such a constraint that it cannot exit, if the reason for enduring is tolerable; for conversely, if it experiences a very great difficulty, it is not bound to remain, since it does not seem to have willed to oblige itself to what is morally impossible for it. And they hold to our same judgment: 2 c. 41 n. 46 and 1 p. 4 n. 9, who are not well cited. How much, however, does he sin who, having a vow of Religion, commits this offense by postponing its fulfillment? See the aforementioned [work] chapter 3 note 221 verse.

Question 428 Lab. IV. On the precepts particular, etc., 14: 4. He who holds a license may grant dispensative permission to pass to a "laxer Order" with

the consent of the Chapter, an exempt Bishop or Prelate of the Order, from just cause. c. 2 c. 41 n. 103. c. 7. » 5.

He who is professed to a stricter Order petitions (although he may not have obtained) the license from his Prelate to pass over for a just cause. What I add is that such transitions without cause cannot be rashly made. If it happens, then the strictness regarding silence and solitude must be observed; this is not merely according to the institution of the Rule, but also according to present observance. It is proven from c. Licet, de Regularibus. V. ... cc. Ex dictis resolvuntur hi Casus; e r. Canonici regulares ad Monachos transire possunt, non contra; cum Religio Monachorum auferrior sit, c. 2.

Having professed a stricter Rule, if it is not observed in his own monastery or some other house of the same Order, so that there may be hope for reform, he can pass to a less strict Order where the Rule is observed: thus, considering the present state, he may lead a more austere life. A religious can also go from his own Order to a stricter one with permission from his Prelate, even if such permission is denied; in this way, as Saint Thomas and the Doctors commonly prescribe according to canon 18 of Licet de Regularibus where Innocent III thus ordains: After (the monk) has requested permission from his Prelate to transfer... he can freely fulfill the purpose of an austere life, notwithstanding any improper or unreasonable opposition from the Prelate. Tamen debet Subditus Prælati responsum expectare usque ad tempus, quo Superior valeat examinare, an debeat vel non impertire licentiam. Contrary to this, however, having carefully considered the matter, the superior is bound to grant permission as soon as he sees that there is nothing hindering it. The Pontiff, (adding to his authority), should without difficulty and without any perversity grant license to the subject for any passage, so that it does not appear that the purpose inspired by divinity is hindered. Here commonly they teach concerning Relig. tractatus 8, lib. 1, cap. 3, n. 17.

Sylv. verb. Religion IV qu. 1 num. 5. Pell. tr. 3 A 5 n. 13q. Miranda t. 1 q. 31 a. 6. . 15 c. 5 n. 68 etc., quod. A prelate would gravely sin if he denied permission without just cause, because by doing so he would inflict grave injustice upon the subject, drawing him back from the state of perfection. This is confirmed by the words of Innocent, where it is said: "An unjust refusal to grant permission on the part of a prelate constitutes an impudent contradiction: Despite such impudent and indiscreet opposition from the prelate, we have said 'unjustly': for there are three just causes, from which a Superior may lawfully deny permission, as stated by the same Pontiff in cited chapter Licet: And 1." If the subject, through temerity or levity, would wish to transgress, for instance, if he were led by anger from some

accepted offense, or by a view aimed at obtaining some temporal advantage.

In dubio tamen negativo presumitur recto animo procedere, ut dicunt c. c. 9 n. 2 et In dubio autem positivo standum judicio Superioris, tam Subditi quam Prælati Conventus, nempè Generalis, vel Provincialis, ut præcipit Pontifex eod. c. Licet. 2. If the transition results in a loss to his Order: because common utility (words of the text) prevails over private utility. But with regard to such a jacturè, it is not reckoned as that which the Order would convey through the privation of an example of that religious good; for if such a jacturè were sufficient, no one would be permitted to pass to a stricter Order; by jacturè they understand etc. If, for instance. That monk was a Doctor or an Artificer of such excellence that from his deficiency the Religion would notably incur notable damage. If through transition the Order were to suffer a grave injury or disgrace; so that thereafter it would be notably despised by others, see whether it may appear that another Order certainly excels in the perfection of the Rule.

Addendum: non licere monacho hunc transitum intentare, si altera religio quam optat nollet eum recipere, juxta praeceptum Urbani VIII., ut in qui dixit: Non permittatur transire, nisi constiterit eam religionem paratam esse eum recipere. It suffices, however, if no impediment prevents it, that the permission of the Conventual Prelate be granted to whom the transit is requested, according to Sylvest. Religion 4 qu. 3. Peyrin q. 1 c. 24 et Utrùm autem transitus sine petitione licentiae non solùm sit illicitus, sed etùm invalidus? Azor affirms in c. 14 q. 6. n. 95 etc. They very probably deny otherwise, in 3 cap. 10 n. 22.

Sylvest. l. c. q. 1. et Bon. Just as well, more useful questions ought to be annexed. It is inquired about I. May a Parish Priest lawfully enter into Religious matters contrary to the Bishop? Absolutely must it be affirmed according to c. Duo sunt leg. 19 q. 5 as quoted: If anyone among the clerics in his own church under the bishop retains the people (namely his own, as explained by the Glossa), and lives secularly, and if he has been inspired by the Holy Spirit to save himself in some monastery or regular canonry... even against the bishop's opposition may he be free according to our authority: thus Urban II. to Rufinum.

The reason for this sanction is given in [Decretals] 2 q. 186 a 7 dicens: The obligation of perpetual vow is preferred to all other obligations; to be bound by such perpetual vow and solemnly to be dispensed from attending divine obsequies properly belongs to the bishops and religious (Religiosis). Presbyters autem curati et archidiaconi sunt obligati voti perpetui et solemni ad custodiam animarum retinendam sicut Episcopi; unde Episcopi

non possunt Praesulatum deserere absque auctoritate Romani Pontificis, ut extrâ de Deinde S. Th. (ad 2 d. a. 8) affert textum D. Hieronymi ad Vigilantium sic dicentis: dicis si omnes se clauserint... quis sequiare homines lucrifaciet? quis peccantes ad virtutes poterit exhortari? etc. Respondet S. Hieronymus: Rara est virtus, nec pluribus appetitur. All these things are certainly declared by N. SS. P. Bened. XIV. In his Bulla, which begins with, Ex quo dilectus, issued on the day 14th January 1747: Nevertheless, the same Pontiff does not doubt that the Parochius is altogether bound both by the office (words of the Bull) and by the honor, as well as by the precept of natural law, to inform the Bishop of his accepted counsel before he enters into Religion; so that the flock may not be left without a shepherd; but if the Bishop subsequently dissents, the Presbyter is not constrained (says the Pontiff), lest he be prevented from entering into Religion.

Furthermore, it is decreed in the same document that the Benefice shall not be vacant, unless after Profession; and in the meantime, the Parochus shall derive the fruits thereof, provided some legitimate impediment detain him from doing so. And the same [Pope] has decreed regarding all other Beneficiaries, according to the opinion transmitted from . 16 n. 12 and . 7 c. 4 n. 7 etc., Question NoneII. What is to be said about Clerics or other Beneficiaries who are not in charge of parishes? I respond: Although they are bound by their office and honor to notify their Bishops of their intention to enter religious life; yet they do not sin, as the SS declare. Bened.

XIV. In the aforementioned Bull, if they omit this out of fear and reverence, lest perhaps they be withdrawn from fulfilling the desire thereof. It is certain that Bishops cannot forbid their Clerics to enter Religion, as is contained in c. 19 q. 1 where it is taken from a Council. Tolet. IV dicitur: Clerici, qui Monachorum propositum appetunt, quia meliorem vitam sequi cupiunt, liberos eorum ab Episco- po in Monasteria largiri oportet ingressus, nec prohiberi propositum eorum, qui ad contemplationis desiderium transire nituntur. The aforementioned Pontiff N. commends and approves these Canons and likewise affirms that this is not to be understood solely of religious persons engaged in contemplative life, but also of those involved in active life.

He nevertheless declares that a Bishop might properly recall his cleric from religion if his entrance to it would be to the serious detriment of the Church to which he was attached, using these words: "And what right confines more strictly the Superior of an Order less strict, so that one who has been diverted from a regular life conforming to a milder rule to a stricter order, even after solemn profession in such, may recall and dismiss

him; similarly, the Bishop also possesses this right in certain cases and for just causes, so that he might reclaim his secular cleric assigned to a regular Order." This is most clearly taught by the renowned Canonist, whose words are these: A cleric can pass over to religion without petitioned permission, even if he be opposed; yet we would believe that he could retrace his steps, were the first Church grievously to sustain a loss through his departure..... Sufficient provision has also been made for the Bishop who wishes to assail with arms drawn those clerics of his own, having been involuntarily diverted from secular orders to regular cloisters. Moreover, when it happened that a certain Archidiaconus had passed over to the society of JESU; and Most Reverend. Cardinal Quirinus, complaining that he had done this against his will, contested in a complete printed pamphlet, so that the Pope might declare that clerics cannot enter religion without the license of the bishop; our Pontiff responded as Gregory did (Epist. 35 l. 12) to some other bishop, namely not to hinder such clerics from their purpose, but rather to exhort and confirm them in perseverance. III.

In what cases is it permissible for Bishops to enter religion? It has been stated above from question 189 article 7 and question 185 article 4, that bishops are not permitted to desert the Church assumed by them through perpetual vow unless by authority of the Pope and for just cause, as is also expressed in canon law on account of their own defect, namely, if they be simoniacal, irregular, or ignorant, old, or infirm. II. on account of a defect in the subjects, if from them he cannot derive benefit. III. on account of scandal to others, not truly, if scandal arises from the malice of some who wish to trample upon justice. Wherefore it must be avoided that Bishops may renounce Churches for no reason at all from among the aforementioned causes, and even to the point of entering religious orders.

And thus also they cannot exchange Churches, as is expressly stated in Canon 15. The First Council of Nicaea and the same is also contained in Canon 5. Council to Anastasius. Saint Hieronymus of Nicæa provides a reason: Let not a poor virgin, rejected in society, seek embraces as an adulteress with a richer one. Therefore justly it is said (p. 115) that translations have been forbidden, because they are ascribed to a defect of cupidity, since no one is found who transfers himself from a richer Episcopal office to a poorer one.

Whether, however, the translation of Bishops is forbidden by Divine Law? See infrd n. 104. This however requires to be brought to the test of truth two other 77 questions exceedingly with regard to practical knowledge useful. It is sought after IV. Whether parents commit a grave sin by diverting their sons from the Religious State without just cause?

If they turn away gravely by means of threats, or violence, or fraud, no one excuses them from mortal sin. If, however, aversion is caused by entreaties or promises, according to P. 3 de Rel. l. 5 c. 9 n. g, this does not belong to the genus of a grave sin; because (as he says) on one side there is no injury involved, although the son suffers a serious loss, yet he does not suffer involuntarily, but freely consenting; on the other hand, the son is not led into evil, but only drawn away from what is non-necessary for salvation. But it must be entirely held with the common opinion of the Doctors, that these Parents sin gravely who lead their children away from Religion either by fraud or by force, or by promises, or by some other means. Ita Arionin. Mire.

Sylvest. Angel. Tab, et com- muni; item Mol. t, 3 tr. 4 D. 51 § Secunda verò, Abelly p. 344. . c. un. n. 29. Anacl, eod. tit. p. 319. n. 19. . 1 p. 291 n. 21 . 2 p. 195 n. 538. P. . Sayr. et .

III. 434 Lib. IV. concerning particular precepts, etc. Likewise according to Leand. D. 6 q: iq. condemn with regard to mortal sin; not only parents, but also strangers who turn away from the State of Religion. Reason, because this cannot be without great damage to him who is drawn away from Religion; as Suarez himself confesses. Wherefore, whether it be done by violence or fraud, or by prayers, or by any other means, it cannot be excused as a grave sin. And the same concludes thus in the conclusion: Although it may be true that this is not a grave sin per se, nevertheless without doubt it is a very great sin contrary to the order of charity and with respect to God, from whose greater obedience man is separated.

If therefore such a sin much repugns to the order of charity, who will say that it is not a grave sin? This reason embraces not only parents, but also strangers. But I consider those Parents who turn their children away from Religion to be guilty of a doubly grave sin, for besides committing a sin against charity, as we have seen, they also commit another sin against piety, in that by virtue of their own office they are bound to labor heavily for the spiritual advancement of their own children; as Bon. well observes in 4. Prece. Doctor 6, quæstio una, parte quinta, nota secunda.

Nevertheless, I do not therefore deny that more parents can be excused from a mortal sin at least for some brief time on the grounds of ignorance or inadvertence; which is something that can easily pertain to them on account of the strong affection they have towards their children. 58 Question: V. An, et quomodo quis a Deo vocatus ad Religionem peccet, si Vocationem suam negligat adimplere? We respond that to neglect one's

Religious Vocation, in and of itself, is not a sin; for Divine Counsels, per se, do not obligate to guilt. However, on account of the danger to eternal salvation to which he has committed himself by making his election of status contrary to the Divine pleasure, he cannot be excused from any guilt. And indeed, if anyone believed that by remaining in the world he would incur damnation, both on account of his own weakness which he experienced amid the occasions of the world, and on account of the lack of aids which he would have in Religion; he cannot be excused from a venial sin when he exposes himself to a great risk to his salvation.

She q. 8 n. 94; who previously says, when one has bound himself by a vow so that he does not sin if he does not enter the Religious Order to which he is called: Thus nevertheless he subjoins; If conscience shall say to you (which often happens) that you are deserted by God unless you adhere to the Divine Vocation: you will perish if you remain in the world, etc. then it is a sin not to follow the Divine Vocation. Whether, however, it is in a bad state of conscience for those who, having morally already been certain about the call to God towards Religion, strive to persuade themselves that they can equally easily neglect their salvation by remaining in the world or by returning to it? It does not seem doubtful that they expose themselves to a great risk of salvation. For Habert in his treatise on the Sacraments, book 1, chapter 2, speaking about him who does not accept the state destined for him by God, says thus: He will not be able to attend to his salvation without great difficulties; and he would remain in the body of the Church like a member of the human body moved to its own seat, which can serve but with great difficulty and with some deformity. Then he correctly concludes: Although, speaking absolutely, salvation can be achieved, yet it will nevertheless find it difficult to enter the way of humility and penance, which is open for itself to enter into life.

Therefore, Saint Gregory (Homily 20 on the Gospel) writing to Emperor Mauritius, who had prohibited through his Edict that soldiers become religious, wrote that this law was unjust, since it kept many out of Heaven: For many are (in the words and reasoning of the Holy Doctor), who unless they leave everything behind, utterly cannot be saved by God. The reason for this danger is that he who remains in the world contrary to God's Vocation will not have congruous aids of Grace, which God Himself has prepared in Religion: and therefore, being deprived of these, he finds it difficult to resist the temptations of the world, and thus falling, incurs damnation. In addition, si quis alter, qui vocatus ad Religionem est, dissuadit ingressum vel suadet egressum etiam sine vi aut fraude, peccat mortaliter, ut vidimus supra in quaestione praecedenti docere communes Doctores, eo quod induceret vocatum ad subeundum grave damnum, licet ille omnino sponte illud patiatur. Si ergo, qui alteri consulit, ut damnum

sibi inferat, non excusat a peccato mortali, nescio quomodo poterit excusari ille ipsum, qui sibi tale damnum infert. However, I do not wish to render an absolute judgment on this point: I refer that matter to the wise.

Meanwhile we earnestly beseech God, that by His Mercy He may altogether turn us from this dilemma; for in the histories we read tragically executed threats in countless unfortunate events, which the Scriptures declare against such as desertors of this kind of Divine Vocation: For it is written in Isaias: Woe to you, O sons who are deserters... that ye have consulted counsel not from Me; and have prepared a spear not by My Spirit. 30 v. i. In Job: Deus inultum, abire non patitur; ipsi fuerunt rebelles Amini, nescierunt vias ejus. c. 24, p. 12. In Libro Proverbiorum autem caput i, v. 23 id explicitius legitur, ubi singula verba attentanda: En proferam spiritum meum (ecce Divina Vocatio), quid vocavi et renuitis... Despexitis omne consilium meum... Ego quoque in interitu vestro ridebo et subsannabo, cum vobis id, quod timebatis, advenerit. When shall come repenitence and ruin, as a tempest rushing in (namely, a tempest of temptations and perils with which the world abounds); when tribulation and straitness shall come upon you, then they will call upon me, and not equity. Let them rise up and not find Me, because they have borne an excessive discipline..., nor have they consented to My counsel: (note that He speaks not of precept but of discipline and counsel). They have detracted from all My correction: (those who, despising the Vocation, say that in any state they can securely obtain salvation without regard to it will be reproached here). Therefore they shall eat the fruits of their own lives, and with their own counsels they shall be satisfied. (This is the punishment chosen by those who do not follow according to Divine but their own counsel). The aversion of the little ones will kill them, and the prosperity of the foolish will destroy them: (perish; these serve the light temptations of the world and its goods for their destruction). Hence S. Bernard thus addresses those called to Religion: 'Chastity is endangered in pleasures, humility in riches, piety in business, truth in loquacity, charity in an ungodly world; Flee from the midst of Babylon, and save your souls.' 'I desire all these things, that they who neglect Religious Vocation diligently consider whether they ought justly to fear lest it exist or not in a bad state.'

But you will say, are all therefore bound to enter Religion, that they may be saved? I respond and distinguish: if you speak of the non-vocated, assuredly they are not bound: because God in this age will provide them with opportune aids for salvation. If however you speak of those who are called, I say that they are bound to enter Religion, because God will refuse them the aids which He has prepared for them in Religion, and without which, although they might be aided by ordinary means, they would

nevertheless, as a matter of fact, find it difficult to obtain salvation, when He proclaims: Saint Cyprian: The virtue of the Holy Spirit is ministered to us according to its own order, not at our discretion. To what are Religious persons bound who have been expelled and fugitives? By what causes can Religious persons be expelled from Religion? In what manner can they acquire expulsion? For what reason are those who have apostatized bound? Why are the ejected bound in regard to apostates, or those who have been ejected?

I oppose, "A religious person can be expelled justly on proper causes from Religion": 79 "It is possible to expel him: 1." If one who exists in a grave or pernicious crime appears to be notoriously incorrigible; in such a case he thinks that Moniales should be confined permanently to prison rather than expelled. 6 mor. Chapter 9, Article 2. If on account of the infamy of the crime it cannot be tolerated without grave damage to the Order; 3. If in admission there has been a silence regarding an impediment, whether essential or at least very grave, such as leprosy, etc., as they teach.

Religious regulation number 34. chapter 4 note 56. The reason is, because in a matter decidedly grave it deceives, so much that fraud 438. Lib. IV. On particular precedents, etc., he has given a cause for admission; See 9 R. 57, where it is taught that, although hitherto from the common decree issued by Sanc. . in the year 1624, through no privileges, they cannot be expelled from Religion (excepting the Society).

(JESU), unless they be incorrigible: such however are not deemed to be, except those who have been proved by fasting in sackcloth for one year and penance. Assuming this, Resp. j. The Religious, having been ejected on account of his profession of religion, remains a Religious bound by his vows. . 4 L. 5 c. 13. ex communi. These cases are dissolved harshly. 80. » 1.

They are ejected from things which they acquire and use, and to whom only the administrator can vendicate, but not possess: nor is that acquired by a monastery which is no longer a member thereof, but rather by the Church in which it has its benefit; or by the Pope if he does not have such a benefit and is exempt. Which is, if he is not exempted, from the Bishop of the place. . c. ex Mol. I have said to him who is ejected: Ejected; because fugitives and apostates, excepted, who have accepted things from Ecclesiastical Benefit; it is more fitting for a Monastery to be acquired by them if that dominion is capable of being held in common, otherwise, the See of Apostolacy. The reason is because the monastery could, like servants, exact retribution and bring them back. Sylv. etc. " 1.

The reason is because the Monastery, like a master of slaves, could vendicate and reduce them. 3. Sylv. etc. « » 4. » 5. » 6.

» 7. » 8. » 9. Here is the literal English translation of the target sentence:

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» 430. » 431. » 432. » 433. » 434.

» 435. Here is the literal English translation of the target sentence: » 436. » 437.

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» 558. » 559. It is necessary to consider whether a man can be justified by works alone without any consideration of faith. » 561. » 562.

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» 748. » 749. » 750. » 751. » 752.

» 753. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 754. » 755. » 756. » 757.

» 758. » 759. » 760. » 761. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul; quia per hoc quod est imperium, est peccatum mortale illicitum; et per hoc quod est ex eleccione, est licitum. » 762.

» 763. » 764. » 765. » 766. » 767.

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» 798. » 799. » 800. » 801. » 802.

» 803. » 804. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, erit sicut judex; qui scit et paraverit, erit sicut servus. » » 805. » 806. » 807.

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» 980. » 979. » 980. » 981. » 982.

» 983. Quod autem de peccatis mortalibus dicitur, hoc modo intelligendum est: quia non sunt in gratia habituali, sed sunt ex causa naturae et habitus humani. » 984. » 985. » 986. » 987.

» 988. » 989. » 990. » 991. » 992.

» 993. » 994. » 995. » 996. » 997.

» 998. » 999. » 1000. » 1001. » 1002.

» 1003. » 1004. » 1005. » 1006. » 1007. Quod autem ad peccatum mortale pertinet, hoc est quod sit contrarium legi divinae et violare gratiam habitualis.

» 1008. » 1009. » 1010. Quod autem ad peccatum mortale pertinet, hoc est

quod sit contrarium gratiae habituali et violatoris legis divinae, hoc est actus elicitus vel imperatus. » 1011. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui est sana in corpore suo, non consideret de carne corruptibili». » 1012.

» 1013. » 1014. » 1015. » 1016. » 1017.

» 1018. » 1019. » 1020. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non parat, sicut judex exigit, ita punitur». » 1021. Quod autem ad peccatum mortale pertinet, hoc est quod ex hoc peccato non sit habitus contrarius gratiae divinae; sed si sit habitus contrarius, hoc est quod sit actus elicitus vel imperatus. » 1022. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xviii, 8: «Quicumcumque ignoraverit unumquemque de his verbis meis... »

» 1023. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui est homo sicut iste?». » 1024. » 1025. » 1026. » 1027. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui cognovit veritatem et abiit a veritate, huius mundi filius est».

» 1028. » 1029. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, similem est ei homini qui in nocte conspexit lucernam suam et abscondidit eam sub cisterna». » 1030. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono praeclaro. » 1031. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui dedit mihi omnem potestatem super caelos et terram». » 1032. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono praeclaro.

» 1033. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui dedit mihi omnia haec, et super omnia voluit me habere in dilectione». » 1034. Quod autem ad peccatum mortale pertinet, hoc est quod ex hoc peccato non sit habitus contrarius gratiae divinae; sed si sit habitus contrarius, hoc est quod sit actus elicitus vel imperatus. » 1035. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum

Augustinum. » 1036. » 1037. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1038. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 1039. » 1040. » 1041. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 1042.

» 1043. » 1044. » 1045. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1046. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1047. Quod autem de peccato mortali dicitur, hoc modo intelligendum est: quia si quis peccaverit mortaliter et non satisfecerit poenitentiae, statim post peccatum periret; sed cum sit gratia habitualis in homine, necesse est quod non perat.

» 1048. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono praeclaro. » 1049. » 1050. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1051. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1052. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui est homo qui tollat vasa de foro suo et ponat in foro alterius? »

» 1053. Quod autem ad peccatum mortale pertinet, habet rationem actus elicitus et non imperatus. » 1054. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono praeclaro. » 1055. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1056. » 1057. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono praeclaro.

» 1058. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1059. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui est homo qui tollat lapidem de pariete et non timeat hominem? » » 1060. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, similis erit lapidibus hominibus». » 1061. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit,

similem est ei homini qui in nocte conspexit lucernam suam et abscondidit eam sub cisterna». » 1062. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non parat, sicut judex exigit, ita punitur».

» 1063. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 1064. » 1065. Quod autem ad peccatum mortale pertinet, hoc est quod ex gratia habituali procedit et non ex imperio legis. » 1066. » 1067.

» 1068. » 1069. » 1070. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 1071. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui habet auriculam et non auspicatur, sed condemnat». » 1072.

» 1073. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, erit sicut judex; qui scit et paraverit, erit sicut servus. » » 1074. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1075. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1076. » 1077.

» 1078. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 1079. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1080. » 1081. Quod autem ad peccatum mortale pertinet, non est gratia habitualis sufficiens ad impedientiam ejus. » 1082. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul.

» 1083. » 1084. » 1085. » 1086. » 1087. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul.

» 1088. » 1089. » 1090. » 1091. Quod autem ad peccatum mortale pertinet, hoc est quod sit contrarium gratiae habituali et violator legis divinae, hoc non potest esse ex imperio legis, sed ex voluntate liberi arbitrii. » 1092. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1093. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 1094. Quod autem ad peccatum mortale

pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1095. » 1096. » 1097.

» 1098. » 1099. It is to be noted that the term "habitus" in scholastic theology does not merely denote a disposition or habit in the common sense, but signifies a certain permanent and habitual principle of operation, which is infused by God and inclines the will to good works. » 1101. » 1102.

» 1103. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, similem est ei homini qui in nocte conspexit utinam sibi lucerna parasset». » 1104. » 1105. » 1106. » 1107.

» 1108. » 1109. » 1110. » 1111. » 1112.

» 1113. » 1114. » 1115. » 1116. » 1117.

» 1118. » 1119. » 1120. » 1121. » 1122.

» 1123. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1124. » 1125. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1126. » 1127.

» 1128. » 1129. » 1130. » 1131. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1132. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1133. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui habet auriculam et non auspicatur, sed condemnat». » 1134. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1135. » 1136. » 1137.

» 1138. » 1139. » 1140. » 1141. » 1142.

» 1143. » 1144. » 1145. » 1146. » 1147.

» 1148. » 1149. » 1150. » 1151. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul. » 1152.

» 1153. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1154. » 1155. » 1156. » 1157.

» 1158. » 1159. » 1160. » 1161. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1162. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1163. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1164. » 1165. » 1166. » 1167.

» 1168. » 1169. » 1170. » 1171. » 1172. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1173. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1174. » 1175. » 1176. » 1177.

» 1178. » 1179. » 1180. » 1181. » 1182.

» 1183. » 1184. » 1185. » 1186. » 1187.

» 1188. » 1189. » 1190. » 1191. » 1192.

» 1193. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit me et弃你这种无礼的要求。 » 1194. » 1195. » 1196. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non parat, sicut judex exigit, ita punitur». » 1197.

» 1198. » 1199. » 1200. Quod autem ad peccatum mortale pertinet, habet rationem actus elicitus et non imperatus. » 1201. Quod autem ad peccatum mortale pertinet, habet rationem gratiae habitualis et gratie sufficiens, ut sit causa potentiae peccandi. » 1202.

» 1203. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui est homo sicut iste?». » 1204. » Gratia habitualis non est quae sit in rebus materialibus sed quae sit in virtutibus habituallibus et in intellectu et voluntate. » 1206. » 1207. Quod autem ad peccatum mortale pertinet, hoc est quod sit

contrarium legi divinae et violare gratiam habitualis.

» 1208. » 1209. » 1210. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, similem est ei homini qui in nocte conspexit utinam sibi haberet tres talentos et non paravit». » 1211. Quod autem ad peccatum mortale pertinet, hoc est quod homo ex voluntate suae faciendo offendit Deum et violavit legem divinam. » 1212. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xviii, 8: «Si tu non dimittis angeli tui debita, etiam Deus non dimittet tua debita».

» 1213. » 1214. » 1215. » 1216. » 1217.

» 1218. » 1219. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1220. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum naturali vel divino. » 1221. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. v, 28. » 1222. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1223. » 1224. » 1225. » 1226. Quod autem ad peccata mortalia spectat, non est licitum eis quae sunt ex gratia habituali; sed necessaria sunt quae sunt ex gratia praecedenti. » 1227. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili.

» 1228. » 1229. Quod autem ad peccatum mortale pertinet, habet rationem actus elicitus et non imperatus. » 1230. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1231. Quod autem ad peccatum mortale pertinet, hoc est quod sit contrarium legi divinae et violare gratiam habitualis, vel per se vel per alium. » 1232. Quod autem ad peccatum mortale pertinet, hoc est quod sit contrarium legis et contra voluntatem Dei, et hoc ex libero arbitrio procedit.

» 1233. » 1234. » 1235. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1236. » 1237. Quod autem ad peccatum mortale pertinet, habet rationem actus imperatus et elicitus simul.

» 1238. » 1239. » 1240. » 1241. » 1242. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1243. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1244. » 1245. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1246. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum philosophos et theologi. » 1247. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili.

» 1248. » 1249. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum philosophos et theologi. » 1250. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1251. Quod autem ad peccatum mortale pertinet, habet rationem gratiae habitualis et gratie sufficiens, ut sit causa potentiae peccandi. » 1252.

» 1253. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1254. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1255. » 1256. » 1257. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1258. » 1259. » 1260. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum philosophos et theologi. » 1261. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare. » 1262. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare.

» 1263. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1264. » 1265. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1266. » 1267. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et per se contrarius legi divinae.

» 1268. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xii, 31: «omnis imperitus

peccatum et blasphemia». » 1269. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1270. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1271. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1272. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum philosophos et theologi.

» 1273. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1274. » 1275. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum philosophos et theologi. » 1276. » 1277. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1278. » 1279. » 1280. » 1281. » 1282. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare.

» 1283. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1284. » 1285. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1286. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, similem se habebit regno caelorum judicii». » 1287. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1288. » 1289. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et libidinosus, et contrarius legi divinae. » 1290. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, et contrarius bono primum appetibili. » 1291. Quod autem ad peccatum mortale pertinet, hoc est quod sit contrarium legi divinae et violare prohibetur. » 1292. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1293. » 1294. » 1295. Gratia habitualis non est quidem peccati, sed contra peccatum efficax. » 1296. » 1297.

» 1298. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xii, 31: omnis imperitus qui loquitur imperium, et non praesumit esse dominus. » 1299. » 1300. Quod

autem ad peccatum mortale pertinet, hoc est quod sit contrarium gratiae habituali et violator legis divinae, hoc est actus elicitus vel imperatus. » 1301. » 1302.

» 1303. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1304. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xviii, 8: «Si tibi frangatur manus aut pedis, abstine illo ab te; melius est ut perdas unam ex his membris, quam totum corpus in inferno consumaris». » 1305. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare. » 1306. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare. » 1307. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1308. » 1309. » 1310. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matthaei: «Qui scit et non paraverit, similem se habebit regno caelorum judicii». » 1311. » 1312. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare.

» 1313. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xviii, 8: «Si tibi frangatur manus aut pedis, abstine illo ab te; melius est ut perdas unam ex his membris, quam totum corpus in inferno consumaris». » 1314. » 1315. » 1316. » 1317.

» 1318. » 1319. » 1320. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xviii, 8: «Si tibi frangatur manus aut pedis, abstine illo ab te; melius est ut perdas unam ex his membris, quam totum corpus in inferno consumaris». » 1321. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare. » 1322. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum illud Matth. xviii, 8: «Si tibi frangatur manus aut pedis, abstine illo ab te; melius est ut perdas unam ex his membris, quam totum corpus in ignem mittaris».

» 1323. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare. » 1324. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum philosophos et theologi. » 1325. » 1326. Quod

autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare. » 1327. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccatum mortale.

» 1328. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum quod dicitur peccare. » 1329. Quod autem ad peccatum mortale pertinet, hoc est quod sit contrarium gratiae habituali et violator legis divinae, hoc non potest esse ex imperio legis, sed ex voluntate liberi arbitrii. » 1330. » 1331. » 1332. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum.

» 1333. » 1334. Quodcumque autem est peccatum mortale, ex hoc quod contrahitur a homine per suam voluntatem, et non ex hoc quod patitur ab alio, derivatur. » 1335. » 1336. » 1337.

» 1338. » 1339. » 1340. » 1341. » 1342.

» 1343. » 1344. » 1345. » 1346. » 1347.

» 1348. » 1349. » 1350. » 1351. » 1352.

» 1353. » 1354. » 1355. » 1356. » 1357.

» 1358. » 1359. » 1360. » 1361. » 1362.

» 1363. » 1364. » 1365. » 1366. » 1367.

» 1368. » 1369. » 1370. » 1371. » 1372.

» 1373. » 1374. » 1375. » 1376. » 1377. » 1378.

» 1379. » 1380. » 1381. » 1382. » 1383. » 1384.

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» 1391. » 1392. » 1393. » 1394. » 1395. » 1396.

» 1397. » 1398. » 1399. » 1400. » 1401. » 1402.

» 1403. » 1404. » 1405. » 1406. » 1407. » 1408.

» 1409. » 1410. » 1411. » 1412. Quod autem ad peccatum mortale pertinet, hoc est quod sit actus elicitus et deliberatus, secundum Augustinum. » 1413. » 1414.

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1499. » 1500. » 1501. » 1502. » 1503. » 1504.

» 1505. » 1506. » 1507. » 1508. » 1509. » 1510.

» 1511. » 1512. » 1513. » 1514. 1515. » 1516.

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1601. 1602. » 1603. » 1604. 1605. 1606.

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1661. 1662. 1663. » 1664. 1665. 1666.

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» 1703. » 1704. » 1705. » 1706. 1707. 1708.

» 1709. » 1710. » 1711. » 1712. » 1713. » 1714.

1715. 1716. 1717 It is not permitted to perform Divine Office except in the Sacraments, as it is said of the condemned one to be rowing in a trireme. They also say there that one who permanently dwells outside the monastery is exempt from Divine Office; but some deny this with probability.contra 4. Even though it is not improbable that they teach and prove the contrary; nevertheless, it is more evident, and more probable. The reason is because, since he is bound by his vows, he must qualify himself so that his profession, conjecturally made through his vows, can be fulfilled. * (Hence he is bound to correct himself. : d, r. 5 n. 102.) * This reasoning is more probable if Oddo himself revokes it. . c. n. 6. ex Sylv. . » » 5.

He can be ejected, even if he has remained in the world, to remain, if he is not received in the monastery, unless the reason for taking religion is sought: because he did not vow another thing, nor is it now established by himself (as I suppose), so that he may not be received. Thus. Where he adds, Bishops are able to eject someone under certain conditions; so that either another Religion may enter, or he may return to his own; nay, even Ordinaries of places can be compelled to do this. The reason is that such persons do not live in this world without danger and scandal to others. See c. n. 8 and g. Respond. 2.

Prelates of Orders are bound to require back those who have fled, and according to canon 82 they must do so if they can be corrected without grave damage to the Order's interests, and not absolutely incorrigible; thus, the reason prior in order is that by divine and natural law prelates are obliged to look to their salvation, but the reason posterior in order is that, if they may exclude them for just cause, they also may not receive them back after they have maliciously left. IV. On particular precepts, etc., I have said regarding fugitives and apostates: because those who have been ejected by a just sentence, even if they have amended themselves, necessarily deny that they should be received back. They affirm: Chapter 2, Decree 41, Article 15. Both probably. You inquire whether one who has professed himself in one monastery may think about transferring himself to another.

» Resp. posse, si plura Monasteria faciant unum corpus sub uno capite; secus, si singula subsint suis Superioribus sub Episcopo, vel immediatè sub Papa. The reason is, because he did not vow obedience except in this convent. . 6. n. 10. See also Sanchius, l. 7. mor. c. 32. » ## HEAD II. ### On the State of Clerics. « Clerics are generally called those who have been initiated into the Sacred Orders, or at least have received tonsure. Concerning whose status many things pertain to it, of which elsewhere we shall treat, here we treat of Ecclesiastical Benefices, Hours Canonici, and a few other matters. ### DOUBT I. #### ON ECCLESIASTICAL BENEFITS. #### ARTICLE I. ##### What is a Benefit, and how manifold? 83 What is a Benefit? 84 How manifold is it?

Res. 1. The ecclesiastical benefice is a perpetual right to receive fruits from goods of the Church, for the sake of some spiritual office, constituted by the authority of the Church, according to 4 L. 2 c. 1. 2 c. 34 d. 1. It is said according to Justinian 1: "Because in a Benefice two mutually separable rights are distinguished," 1. It is a right or power of exercising a spiritual office, and is simply spiritual. The other is the right of receiving ecclesiastical revenues: although it is in itself temporal, nevertheless, since it is founded on a spiritual office and is annexed to it, it participates in some degree of spirituality. It is said 2.

By authority of the Church, etc., because solely to the Prelate belongs it to institute offices in the Church and annex ecclesiastical revenues thereto; and it is his concern to consider how many and what kinds of ministers the Church stands in need of: Resp. 2. Benefit is divided 1. into Secular, which is for seculars, and Regular, which is instituted for regulars. Whereby without dispensation neither secular nor regular can be conferred upon each other. Moreover, every Beneficium is presumed to be saeculare, unless it is proven to be regular, either from its original institution, or

through possession for forty years; for by such possession it is transformed from saeculare into regulare, and conversely. » 2. Benefit is twofold, one simple, the other complex.

It is called duplex when it involves administration, such as the Papacy, Episcopate, and all things denoting dignity, that is, which have precedence, with jurisdiction in external forum, such as Prohibition, Deanery, Archidiaconate, Abbey whether secular or regular, and Cloistered Priorate. Item personae qui est eminentia in ecclesia sine jurisdictione, v.g. locus honorificus in choro, in processibus, suffragii ferendis, ut cantoria et similes. Item Beneficia, quae dicuntur Officia, habentque administrationem rerum Ecclesiasticarum sine jurisdictione, ut Custos, Thesaurarius, Primicerius, Archipresbyter. Finally,双重的恩惠被称为“受管理的恩惠”；因为它们被认为受到双重的责任和关怀的约束，除了为所有人诵读祷文之外，还承担某种管理事务和尊荣。 They are called simple; those which are instituted solely for the performance of Divine Offices, Lib. 442. IV.

On particular precedents, etc., neither administration nor eminence is singularly possessed; thus canonicals or seculars, or regulars, chaplaincies; V. n. 4. and c. 34 d. 2. » ARTICLE II. How are Benefices acquired and conferred? By what means are Benefices acquired? What are the proper collectors of Benefices? What is, and in how many ways is the Right of Patronage? When must the Patron be bound to present? Does time for presentation run while a suit is pending? What is to be done if multiple presentations are made? Do those who are more worthy not sin by failing to present? It is certain concerning those who are promoted to the Cardinalate and Episcopate? 92. This is also certain concerning bishops who do not choose more worthy persons for parishes. 93 What if the election is made for simple benefices? up to 96. 94 Do those patrons who do not present more worthy persons commit a grave sin? 95 Or are those who resign required to do the same? 99. More probable is the opinion. Should those deemed more worthy be elected to Regular Prelatures? True judgment. If the election is made omitting a more worthy one, will it be valid? More probable is the opinion. Are bishops considered more worthy to be transferred to greater Churches?

And this too, whether the transfer of bishops according to the Divine Law of old? 105. What, if a just cause be absent? Is it incumbent upon those choosing to have regard for restitution? And to whom? Is a negative opinion probable? Are those who recommend restitution bound to it? What if the benefit is conferred through collusion? Would the elected candidate be bound to restore the damage to the Church or to a more dignified person in that case? Are examiners bound to report more dignified persons? Resp. 1. Ecclesiastic benefits commonly acquire one

from three modes generally; 1. By election, for example.

Canopjcorum; vel etiam postulationem (quae est electio ejus, qui non erat de Capitulo, vel de jure non erat capax), et confirmationem Superioris, si electum, vel postulatum idoneum intendat. 2. By means of a previous presentation of the patron and subsequent institution by the Prelate of the Church, if the presented individual be deemed suitable. Even though, however, the patron by presenting confers a right to the thing so that it may not be conferred upon another, yet still the right in the matter and the granting of the benefice are given through institution. By free collation, when the benefice is given solely by the right of the prelate, not even. The patronage is subject to right. Wherefore also benefits are divided according to the manner of conferring them into elective, patronal, and free. Resp. 2.

In each Diocese, the Bishop is priorly collector of Benefices, unless by legitimate prescription this right becompetent to another; but the supreme and universal collector of all Benefices, not of patrons, is the Pope. . 1 c. 34 d. 10. The reason for this priority is that in his own Diocese the Bishop is the moderator of Sacred Things: therefore it is his duty to confer Holy Offices. The reason for this is because the Pope is the supreme dispenser of ecclesiastical goods, and the ordainer of ordinaries. But in three ways the Pope can confer Benefits, namely 1. By virtue of prevention. 2. By course of law. 3.

By law of devolution, as is seen in c. where it notes, by law of prevention and concursus, the Pope less frequently uses this to avoid disputes, but rather through agreements between Germany, the Apostolic See, and Frederick Emperor, according to a Constitution of Nicholas V which begins: Ad Sacra, etc., only alternately reserving months for collation, namely January, March, etc.; the rest are left to ordinary collators. But, if within three months from the day of the noted vacation there appears neither disposition nor grace of the Pope in the place of Benefice, the Ordinarius can confer it. Similarly, after the death of the Pope, so long as the See is vacant: c. That is to say, if the Pontiff and the Ordinary shall have conferred the same Benefice on the same day under different circumstances, and it appear not which has prior claim to collation, preference is to be given to him who is found in possession thereof, because thereby he acquires a presumed right. If Library. IV. Of and Bard. d. 6 » c. 6 §. 10. ex c. Si. d Sedebat.

Finally, if the last night of the Episcopal Benefice has begun to be vacant, it is doubtful whether before midnight or after midnight, when the month of the Papal Benefice begins, if no one shall be in possession. No provision,

presumption of law is for ordination. Gonzal. Barbos. Burden. d. 6 c. 6 §. 11. You will ask.

What is the nature and how manifold is the right of patronage? Response 1. It is possible to have the power of presenting to a vacant Ecclesiastical Benefice. Resp. 2. Behold a twofold right, namely the right of ecclesiastical patronage and the right of lay patronship, which belongs to someone because he has founded, endowed, or erected the Church from his own patrimony. 4 tr. 2 c. 13 n. 2 et 4. » You inquire 2.

When the Patrocinator is bound to present himself, regarding the Benefice that is vacant? Respond. If the patronage be layman's, it must be held within four months: * (From c. (From c. » solely. §. If mixed, even then » within six months. ut . If the patronage be laic-, to be held within 4 months: * (From c. (From c. » solely. §. If mixed, likewise » within 6 months: *. Here it is asked whether the time for presentation runs while a lawsuit is pending over the right to patronage? Deny it, if the case is between the Bishop and the patron, or between the very presentees themselves.

If the case is between patrons, namely if they do not agree in presenting; or if it is disputed to whom the right of presentation belongs; however, note that this is mentioned in canon 28 de Notunt tamen cum; but not more extensively from canon 2 de Conces. Provide. You will ask 3. What is to be done, if many are presented? Resp. 1. If a patron who has already presented Peter presents Paul afterwards and wishes for this one to be preferred, the prelate can institute whom he has preferred, if the patronage is lay: because then the second presentation does not make the first irritable, nor contrary-wise.

» But if the patronage be ecclesiastical, the earlier in time will be more potent by right, exe. When authorities concerning the rights of patrons are examined. Resp. 2. If from two patrons, one presenting Peter and the other John, a collation can be conferred upon him to whom it is more pleasing. But it should prefer the more worthy one, even though presented by a smaller part of the patrons, according to c. Quoniam, from Episcopus, then he can confer in the third instance, because the patrons do not agree. Resp. 3.

If among several patrons there is disagreement, one should be instituted to whom many agree. See c. d. 8i. c. Here it is necessary to discuss more questions of greatest importance concerning the collation of Benefices. Question. I. Is there an obligation to choose more worthy ones for

Benefits? It is certain that in no way can one excuse from mortal sin those who promote less worthy individuals to the Episcopate and Cardinalate.

This is held from canon 24, chapter 1 of the Referendary, where it is declared: All and each who have any right whatsoever to promote prelates in the matter of promotion, whether they possess such rights by reason of the Apostolic See or contribute their own efforts... first of all, if they have not considered that nothing would be more useful for the glory of God and the salvation of the people than to strive to have appropriate pastors promoted to govern the Church; then, having communicated with others in sin, they have grievously sinned, unless those who themselves judge others to be more worthy and more beneficial to the Church are promoted diligently according to their deserving merits. From which it is evident that the Popes and Cardinals sin gravely who do not promote to the aforementioned dignities those who are more worthy. Reason, because, since the Benefices or the aforementioned Dignities are instituted for the common good of the Church, it greatly detracts from them who omit to elect more suitable ones. This is confirmed by Proposition 47. damn. ab Innocent. XI which said; When the Council says. Tidentinum to communicate mortally by sharing in the sins of others, who unless they consider those more worthy, and 446 Lib. IV.

Concerning the Precepts particular to individuals, etc., let the Churches judge for themselves what is more useful to them, and promote those Councils or Primacies first; it seems that the Council intends thereby to signify by this that they wish to choose the digner ones, not otherwise meaning anything else than dignity of election. Taking the comparative for the positive: or in the second sense less properly puts forward the digner ones, so as to exclude the undignified, not however the dignified; or finally it speaks in the third sense when there is a confluence. It is certain that bishops are equally bound to solicit with care whom to elect more worthy, whether in a comparative sense taken for a positive one: or in the secondary sense less properly puts them as more worthy, so as to exclude the unworthy, not however the worthy; or finally speaks in the third sense when there is a confluence. The reason is the same as that which has been declared above, since even for parish priests salvation pertains 'where it is said'; hence, the bishop shall choose him whom he shall judge to be more fit for the rest. From the words, however, of Trenti primi Iohannis, relictos quos ipse Ecclesiae magis utiles judicaverit, rectè inferunt cum S. Thomae 2. 2 quaest. 63. art. 2. In other respects equal, they say: c. when one is senior; 2 when one from his own goods has founded a church; 3 a priest in concourse, not of a priest; 4 original with respect to an alien; 5 graduated in some science; 6 who is endowed with greater sanctity or prudence, should be preferred to him who excels only in knowledge. 7 Powerful and

noble, because these things usually contribute not a little to the good of the church; 8 a poor man should be preferred to a rich one. Lastly they note Pass.

Their and Sigismund's at Croix l. 4. n. 594 that, if someone is probably more dignified but doubtfully less dignified than another who is certainly dignified, then this certainly dignified one should be preferred here. It is doubted whether bishops who elect less worthy persons to simple benefices, omitting those who are more worthy, commit mortal sin? There is a double opinion. The first opinion holds that this is improbable, because, since benefices are not instituted (at least primarily) for the good of individuals but for the utility of the community, a slight harm is inflicted upon it if they are conferred on worthy persons, setting aside more worthy ones. They hold thus. According to St. Thomas Aquinas, IIa-IIae, q. 2, art. 2. Beneficium; n. 42.

Sotus l. 3. de 1. : t. 2 pag. 507. ar. 2. . 20 cum Salon. Gabr. Ales. et de Bet: n. 312 et probabilem putant in dicti. Prop. 47. damn. ab Innocent. Eleventh note number nine. To the text, which is adduced by the Adversaries in ch. un.

That is to say. Where it is said: You were bound to dispense the benefit through a more suitable person. Respondent cum Lugo de justitia. D. 35 n. 11, ibidem reprehendit Pontifex Episcopum; non quia non dispensavit digniori, sed quia dispensavit non idoneo; ut colligitur ex judicio Lugonis; ex ejusdem Canonis initio. To other texts, however, which are opposed, they respond, in those there is no precept, but merely an instruction. Not lacking are those who assert that there is no sin in choosing simpler benefices even for those less worthy, as P. 9, who still considers it probable; But I think that one should not deviate from the common judgment, which at least does not excuse from venial sin: Rather, properly speaking, to choose unworthy individuals for canonical offices attached to penitentiary duties, or for preaching and teaching. The second opinion, however, more common and more probable teaches that under grave obligation even simple benefits should be preferred: Reason I., because, as says S. Thom. 2-2, q. 63, a. 2 ad 1.

The Private Ecclesiastic is not the lord (of Benefits), so as to give them gratuitously; but he is a dispenser, etc. Wherefore he sins, because he distributes Benefits to others than those who have a stronger right thereto; for if it be true (as commonly the Doctors affirm); namely, that Benefits are not instituted solely for the common good, but also (although less principally) as rewards of merit, it is evident from this that they have a greater right to them who more abundantly produce the common good; At

least Benefits are goods common to all. And 448 Lib. IV. Of precepts particular, etc., in order that such things also may be owed to those who excel in merits. The second reason is more compelling to me and to Lugoni (who by no means accords with the aforementioned primary reason), because the very utility of the Church, for whose sake these benefits are instituted, demands that those who are more deserving be promoted; otherwise, clerics will scarcely trouble themselves to become more worthy, and thus the utility of the Church would greatly suffer. This damage seems not light but rather sufficiently notable. Herein. Secondo capitulum trentesimum tertium dubia quattuordecim. Lugo concerning Justice.

D. 35 n. 10. . 13. Cross l. 4 n. 588. . 47. Innoc. XI. n. 6 et 9. Roncaglia de Beneficiis c. 5, qu. 9, qui, spectat à, ratione, putat contrariam carere probabilitate, item cum S. Anton. Case, Article.

Fill. Garcia, et alii plurimi. Si tamen DD limitant, et dicunt, non esse peccatum mortale, I. If a more worthy exception is passed over not frequently, but once or twice, as Lugo l.c. n. 21., and Fill. apud Croix d. n. 588. item c. n. 66. with Ales. Soto, Sa, Gabr. Angel P., speaking of benefits merely simple, as Capellani and even canonicates, but not of those to which jurisdiction or a function of great importance is annexed, as above; Reason: because then there would be little damage inflicted upon the Church. This, however, must in no way be admitted regarding curacies in benefices, for which, speaking generally, notable damage to the Church would ensue.

But Vasq. Cov. et Caj. hold that this would be mortal even in all simple Benefices, because an injustice would also be done in a serious matter of distributive justice. On the contrary, he says that what is more noble in these Benefices does not have such strict rights as to make it mortal to violate them; for, as Soto asserts, violation of distributive justice is not always mortal, unless it also involves a violation of commutative justice. They limit the second. If the excess of dignity is small, because then a light damage is reckoned. Thus Lugo no. 21 which calls for a common vote with the P. d. with Arag. Prado, etc. And in this case they say that the election does not exceed venial fault, even if the Electors had previously sworn an oath to elect more worthy persons; and this is admitted both in these two points and in the subsequent limitation: Yet this very limitation must not be admitted as regards curate benefits.

They limit it. If the benefits are trivial matters, as Lugum commonly holds in n. 21 together with c. n. 6 also. Resp. item Sotus, p. 5 tr. 5 R. 13. They limit IV. If according to the law of foundation someone should be elected from some Family, College, or City, as 762 with Sylvius. Limitant V.

If it is anticipated that a more worthy person will soon be available to dispense the Benefit, whether patrons are bound under mortal penalty to have more worthy persons present for Benefits? To be distinguished between cared-for benefits and simple ones. If they are curate, it is certain that Bishops, such as Kings are, have something held from the relation stated in chapter one. Trident. It is certain that, if the Patrons be Ecclesiastical, they are also bound to present themselves more worthy, so that the Council may sanction it according to c. 18 dict. Session 24.

But it is doubtful, if the patrons are laypeople? The first opinion, which they hold, as stated in 13th disputation, second part, page 7, note 6, and by Garcia, P. d. c. 18 where it is said: "That if laic patronage were of legal right, he who has been presented as patron should be examined by those same delegates... and not admitted unless a suitable person is found." Therefore, the Council, says Palaus, imposes no other burden on the layman than to present one who is suitable (idoneum). It is confirmed from chapter Monasterium 33, where it is said: It may be permitted to that Priest whomsoever he wishes, with the consent of the Bishop, to commend himself for the sacred office of that Diocese, so that it not become evil. In what words he comments adversely Gloss- . 450 Lib. IV.

On particular precepts, etc., it suffices that someone be not evil; as is noted also by the Gloss in chapter licet case 8 q. 1. But it must be firmly held with the second opinion, that in benefices curates should be presented to a still laic patron under a grave prelate. This seems certain to me, because in these Benefices the same reason is given as in Bishoprics, for which the Tridentine Council has already declared that they should be promoted by patrons of any rank. That appears to be clearly confirmed by Prop. dam. 47 as mentioned above (as bene advertit Croix n. 583); which is to be understood from the words, when there is a concurrence, not only in Episcopacies in which there is no concurrence, but also in Benefices curatis, which are conferred through concurrence. If however the Beneficia are simple, as it is probable, the Bishop is not bound to confer more weighty things; so too it is probable that he should not seek patrons for this purpose; but because we said that those more weighty things should be conferred, we also consider that patrons should be sought who are more weighty. The chief reason, as he well says in lib. 2 c. 1, those who hold our opinion are Sancho and his colleagues: l. cit.

Croix n. 584 . cit. qu. 4 et Saim. cum 35 n. 39 quamvis excipiat Capellamias, quas quis pro libite in aliqua Capella suae fami- liae instituit, contra Mol. 4 ar. 2 n. 5 quia hoc concedunt tantum Fundatoribus, non autem successoribus. Dub. 3: An eos qui relinquunt beneficia debent de

digniori quaerere? In hoc pluribus diversae sunt sententiae. The first one denies this with reference to l. 2, c. 1, dub. 7, n. 4; and also with reference to c. 34, n. 61, along with Cajetan. Market. Satan: according to D. 35 n. 49 with what does he not sin against distributive justice? Nor sins the Bishop then when resigning to an appropriate beneficiary, because then he is not bound to seek a more worthy one; for decrees speak of choosing a more worthy one in matters of appointment by vacancy, not by resignation.

Nevertheless, it is felt: if a person much more worthy is offered to be resigned, that one should be preferred for the sake of charity towards the common good. The second opinion absolutely opposed affirms, that the resigning person is bound to seek a more worthy one. They hold this, Sotus, in Justice, lib. 3, quaest. 6, art. 2, n. 13, 762; item n. 379. Reason, because he who resigns, although he would not have sinned as a conferrer of Benefice, yet sins, because he is the cause of illicit conferment: for if some conferrer, who is not rightly bound to accept such resignation, were to accept it and present someone who barely deserves it, since a more fitting person could easily be found elsewhere, then he would sin by cooperating with the sin of the conferrer. Hence even he who resigns sins by cooperating in the sin of the conferrer. The third opinion, which they hold 2 from n. 331 with Vasquez and only admit, is that a resignation can be made to one who is not more worthy, when the resignator is equally worthy as the resigner, because then no harm is done to the Church. But as for all these opinions, it seems to me more equitable that the reason for the blame in this matter be sought in the reason for the damage, so that harm come to the Church.

Reason, because, since the intrinsic principal end of the institution of Benefices is the common good, as has been found among canonists (according to what was said in n. 93 and l. 3 n. 492), the Church, by conferring this, bears a burden thereby, so that in case the Beneficiaries wish to resign it themselves, they do not resign except for the common good; but this intrinsic end cannot be neglected without sin. From hence rightly it is inferred, such resignations, especially those of this kind, Lib. IV. Concerning particular precepts, etc., in benefices administered, and especially in bishoprics, such resignations are rarely licit; firstly, because they are rarely made without great detriment to the common good; secondly, because these elections are not made with that diligence of inquiry into merits which the aforementioned benefices obtain through vacation; also, because they are most frequently made with retention of pension, which tends to the harm of the poor; finally, because they are often made from seniors to juniors, whence it follows that, where more worthy ones would have been elected after the resignation of the deceased, they are elected less worthy: All these things undoubtedly tend

to great common damage. Si autem ex circumstantiis cen- seri posset, in aliquo casu nullum, aut modicum detrimento Ecclesiæ inferri ob resignationem factam in aliquem minus dignum alio, qui inventari poterit; tunc bene, ait Lugo, excusari possunt resignantem et collatorem à culpa, saltem gravi. And to this judgment adheres also Croix l. 4 n. 586.

Seek. II. Whether those appointed to regular prelatures should also be considered more worthy for election? The first opinion denies this when Gur. is cited, unless it concerns a Generalate or a perpetual Prelature; as regards, however, movable Prelatures, they say that there is no obligation to elect dignitaries more worthy; firstly, because in Religion Rules already exist, therefore it suffices that subjects be governed according to those rules, which even a worthy Prelate can fulfill without being more worthy; secondly, because if some harm were thereby caused, it could easily be removed by removal. To this judgment adheres Lugo D. 35 n. 56. In the case where subjects are already observing the rules, so that a Prelate who is worthy but not more worthy can be placed over them without any danger to them. But it must be entirely affirmed with the common sentiment, as that same Lugo asserts, and this is held by Solus alone in lib. 3 quaest. 6 art. 2 concl. 9.

Nav. l. 2 c. 2 n. 159. Carden. l. cit. n. 5. ubi id prænotat ut certum, q. 7. 2 n. 27. et etiam habent tamquam certum Croix l. 4 n. 582 et 589. cum Fern. et aliis. Reason, because the same rationale applies to Regular Prelates as it does to Bishops in regard to promoting the good of the community and the subjects under them, whom the Prelates govern as if they were Bishops. Nor should it be said that, although the Rule is present, it suffices for the Prelate to attend solely to the observance thereof: for this observance will hardly be maintained if less worthy ones are chosen; because less worthy ones easily become lukewarm, and unworthy ones escape, or at least do not diligently undertake the incumbency of observance with less care; and hence, from imperfect observance, a relaxation of the Rule's precepts will readily and quickly follow with irreparable damage; for experience shows that where an abuse has once entered into any Religion, it is very difficult thereafter to remove it. And undoubtedly the cause of this most serious damage are negligent Prelates, and those who such negligent Prelates elect. How unfortunate that such damage arising from this source is often suffered by many monasteries!

Therefore, whether I would dare to absolve a Religious who would prefer not to elect a worthy Prelate. And truly, it is right to inquire. III. Whether the election of a worthy person to Benefices, omitting the more important thing, is valid? If the Benefice is simple, it is certain to be valid, this from common decree. V. It is doubtful whether it has been cured.

They probably deny it. c. p. 11 §. 3. n. 3. . 1 c. 1. dub. 6. et cum Consal. Trident. Regarding parochial benefices, after it has been cut down to choosing more worthy individuals, thus is added: Provisions, or institutions, made other than in the aforementioned form are deemed subreptitious: but among these forms (they say), which form is more preeminent that a more worthy one may be chosen, as expressly the Council commands? Confirmant ex Bulla S. Pii V anno MDCLXVI in Bullario n. 32 qua declarantur nullae omnes collationes factae praeter formam Tridentinam praesertim in examine et insuper conceditur appellatio digniori praeterito. They affirm, however, that the collation of Lugo 103 Dist 35 n. 71. with Garc., Ugol., is more probable. Full. Llb.

IV. From page 432, note 422, with Anacl., and Angel., Croix l. 4, note 627, with Gonz. Their. And namely otherwise, if the Bishop shall have chosen him whom he has judged to be less worthy, even though that person is in reality more worthy, there will be no validity. Furthermore, St. Pius prescribed in his Bull that an interposed appeal should not be used to delay, so that the election made first by the Ordinary may be immediately ordered to be carried out, and provided that the cause is pending, it may not be removed from that same Church. Therefore (as Lugo argues well), the election will be valid until the Judge revokes it by appeal; otherwise, and even without an appeal, the election would not be considered null. All nevertheless agree in saying that it is very difficult to judge in such a case as an appellant, since the greater dignity of the elect depends not only on knowledge but also on other requisites of prudence, being integrated, apt, etc. And thus presumption always holds for the election of the Ordinary; unless evident injustice and deceit are proven otherwise, as Lugo states at loc. cit. and 104 Question None

IV. An obligation to elect more worthy persons for curial benefices, especially for the Episcopate, so presses upon [the Church], that a bishop from one church should be transferred to a greater [church]? This whole question hangs upon another, namely, whether the transfer of bishops is prohibited by Divine law or human law? Wherefore this must be discussed. The first opinion holds that the transfer of bishops is prohibited solely by ecclesiastical law, as Leo I determines. Letter 82.

Galasius, however, in the chapter Niside Renunt. The Pontiff, speaking about the renunciation of the Episcopate, explicitly said: "So that if for some useful and honorable cause you persist in this purpose, you may yield to our permission." From which it follows that the Pope may validly dispense without cause, and even legitimately with some cause. So strictly it guards: de Helig. 1. 1 c. 16. with Hulsius and Major, and those who

follow, but the commoner and more probable opinion of the Sententia de Serunda teaches that Bishops are bound by Divine law to remain in their Episcopates; hence neither rightly nor justly can the Pope dispense with them according to cap. Inter corporalia. Of which, since God has reserved to Himself the dissolution of the carnal marriage, so He has also reserved the dissolution of spiritual marriage between the Bishop and the Church; and He added: For it is not by human but rather by divine power that the spiritual marriage is dissolved when it is removed by the authority of the Roman Pontiff (who is known to be the Vicar of Jesus Christ) from the Church. The reason, however, for this natural indissolution is that otherwise innumerable inconveniences would occur: especially because the bishops would greatly lack in love for their own churches, and the churches themselves would be poorly governed, often being changed.

Cajetanii 2. 2 quaest. 184 art. 6. caput 1, sectio 2, capitulum 1 dubium 3: cum recte addunt cum Carthusiano, Soto, Hurtado; etc., Episcopos esse etiam vetitum suas deserere Ecclesias propter votum quod ipsi emittunt dum Ecclesiis praeficiuntur, curam habendi ovium suarum quod votum perpetuum est et in eo solus Papa dispensare potest ut docet S. Thomas 2. 2 quaest. 185 art. 4 et Clarivius quaest. 189 art. 7 ubi ait: Presbyteri autem curati non obligantur voto perpetuo, et solemni ad curam Animarum... sicut obligantur Episcopi. Wherefore Bishops should not abandon their jurisdiction without the authority of the Roman Pontiff. This however must be noted, namely that although the Episcopate is compared to the carnal marriage, yet it is not so truly the case that this spiritual marriage cannot be dissolved by the dispensation of the Pontiff through a just and very grave cause, as all admit. See §§6 Ln. IV. On particular precepts, etc. And thus the response is made to the text opposed to P. Suarez.

Causes autem juste communiter a DD. censentur esse, nimirum magna utilitas Ecclesiæ universalis vel particularis ab alio non supplebilis; vel necessitas Episcopi propter infirmitatem aut aeris malitiam; vel quia in sua Diocesi ob plebis iniquitatem aut ob aliam causam non potest bene suum munus exercere. Thus: according to Soto; and if the Bishop is unwilling to be transferred, the Pope may not compel him thereto: unless there intervene a pressing cause, in which case even the Bishop can be compelled to transfer himself to another Church, as they say in 3 n. 2 and Arag. And the same is held by n6: It is asked V. Si quis eligunt ad beneficia dignum, omisso digniore, tenentur restituere damnum illatum ipsi vel ecclesiæ? The first opinion, which Cajetan holds in 2. 2. qu. 62 ar. 4. Sylv. v.

Restitut. 5. qu. ult. 17 n. 117 et Salon. quia, ut dicunt, sicut si aliqua bona à Fundatoribus relicta essent, ut distribuenter magis benêmeritis aut

indigentibus aut propinquis; isti jus strictum quidem habent ad illa bona; ita jus habent digniores ad Beneficia quæ hac lege universali instituuntur, ut sint non solum stipendia laborum sed etiam præmia meritorum. Others, however, because this confers on the Elector the right to elect from the Church, so that he may choose better ones; whence they say that a young Elector is held by justice of exchange for compensation of the damage which the Church might suffer through election of less worthy ones. The second opinion, no less probable, is defended in 107 Tuentium 2 c. 34 dub. 15; 2 c. 1 Decretum 45 n. 15; 13 disputationes 2 part. 1 p. 11 § 4 n. 5. Lugo D. 35 n. 83. . 5. c. 4 n. 4. Cross l. 4 n. 531. et Canus cum Adrian. Penna, n. 354, qui probabilem vocant, docet: Electorem neque Ecclesiæ, neque digniori tenéri aliquid restituere; Non digniori, quia tunc digniores haberent jus strictum ad Beneficia, quando principaliter, ut supra diximus, Fundatores habuissent rationem meritorum; non verò quando minus principaliter, ut est in casu nostro, cum Beneficia primariò, prout omnes concedunt, imò etiam unicè, prout tenet Lugo, sunt instituta in bonum commune, ut Ecclesiæ inserviatur à bonis Ministris; et licet secundariò essent etiam instituta in præmia meritorum, ex hac tamen justitia nullum jus rigorosum, ad illa acquirunt, nec digni, nec digniores.

Neither otherwise nor under another law or contract does the Church understand electors to be bound; nor do they themselves intend to bind themselves under the burden of restitution beyond what is necessary for choosing unworthy ministers. Wherefore neither is the Church bound to restore anything, since they have it as certain or nearly certain. And furthermore, if an unworthy one be chosen, because then both from the elector and from him elected would there be due to the Church a restitution of damage. Both opinions are very probable; but the second opinion appears to me more probable for the reason which we have stated in lib. 1, p. 25, t. 1, n. 83 and in lib. 3, n. 927, namely, that no legitimate possessor is bound to restitution who has a probable opinion regarding himself. Thus is also resolved that other question which we mentioned in l. 3 n. 585, namely, whether one who advises the Bishop to confer a simple Benefice or a curacy worthy thereof, omitting a more worthy one, is bound to restitution of damages? They affirm subsequently to their own opinion, as stated above; but we, subsequent to our adherence to the second opinion, as mentioned above, say with . They deem it probable that he who advises the Bishop to confer a less dignified Benefice without force or fraud should not be held liable for any restitution.

But otherwise, if by force or fraud it impedes the conferment of the Benefice to a more worthy person; then certainly he is bound to restore the damage inflicted upon him, since everyone has the right that justice be not impeded in the acquisition of rightful goods, as was said. 3 n. 582.

Likewise, if the Benefice were to be conferred by consent, as will be stated in the following question. He, however, is bound to restitution who has prevented someone worthy from obtaining the benefit through hatred, not through violence or fraud! It is more probable that it be denied. See what is said, 1:3 n. 584:109 Question NoneIV.

An, when benefits are conferred through concurrence, choosing a worthy one and omitting a more worthy one, is it necessary to restore this damage? The first common opinion affirms what they hold, page 11, section 4, note 6. 763. Holzrn. pag. 432 n. 419. . 2 cap. 1 dub. 46 cum 4 n. 628. Lugo D. 35 cum P. Ratio, quia eo ipso quo dignior admittitur ad concursum acquirit jus ad rem, cum in communi aestimatione adsit tunc pacatum implicitum in edicto inter Epis. opum et oppositores ut dignior praeficiatur. That which proceeds in every reward, which is promised to those called through concurment for combat, for casting, etc., Lugo says otherwise, namely, that since it is said in the edict that each one should keep his own right, the more dignified ones acquire a right to the benefit by virtue of the explicit pact. All the more so, because in the concourse to Beneficia, according to the Tridentine appeal, the dignity is provided for the more worthy if it be omitted; therefore he says, citing: that the more worthy have a strict right to, Lugo n. 21. and the Second Sentencia denies the obligation of restitution, as Sol. l. 4. de c. 17. also holds in item cited n. 1, who consider it probable.

Reason for these things, because the aforementioned pact, which is supposed to be or is found in the Edict, is not a strict pact, obligating according to the laws of commutative justice, but is merely a promise, obligating only by fidelity; rather it is an explanation of the obligation which the Bishop has per se from distributive justice, which does not obligate to restitution. Without doubt ought grave penalties be imposed on those who compete in the struggle, etc., as mentioned above, because those [penalties] are principally instituted as rewards for merits; but this is not the case with benefits, which are uniquely or principally instituted for the common good. Nonwithstanding this, I dare not depart from the first common judgment, which is very probable. But this second opinion I dare not either pronounce improbable, because it truly does not seem to contradict that there should be a pact interceding between the Bishop and his opposers, rigorously obligated by justice commutativa having been mutually exchanged; And since such a pact does not seem to be established, neither does such an obligation appear to be established. Question. VII.

A worthy one, opposing himself through concurring with a more worthy thing, will sin mortally and be held to restitution if he obtains the benefit,

so that the damage may be made good to him? No doubt, if an unworthy one shall concur with a worthy one, he will sin by concurring and by accepting the Beneficium; and he is bound to restore the damage to the Church and to resign that; see L. 2 c. 1. But if a worthy one shall concur with a more worthy one, two doubts arise. The doubt arises whether by concurring in this manner he will sin gravely? The first opinion denies this, and this is held [to be true] in . 2 c. 34 n. 70. Cajetan 2, 2, qu. 185, ar. 3, 6 c. 15, qu. 14, cum Soto, Bannachi apud Lugo D. 35 n. 88. The reason is, firstly, because it does not pertain to discuss their merits themselves but to the Electors; hence, if they themselves petition for the benefit, they do so under a condition, if they appear more worthy; secondly, because this accords with the mind of the Church, that all who are worthy may compete; otherwise, if it were not permitted for the more worthy to oppose the less worthy, few would compete, and perhaps the more worthy, fearing scruples, might withdraw, which would certainly turn out to be a great loss to the Church.

The second opinion, which 48 n. 4., 5 n. 1. n. 89 and 97 hold, as well as Lugo D. 35 n. 91 does with Turriano, states that if such grace of honor converges in a manner to make it superior to other contenders and then subsequently ceases to petition, so that an election is made, certainly no sin is committed. Afterwards, if he pretends to the election, openly recognizing another as more worthy. Reason, because although the Bishop does not sin by himself choosing through an innocent error, he nevertheless sins materially in cooperating with such a choice to be made; especially because that injustice would tend toward harm to one who has a right to his own election. This judgment appears more probable when speaking speculatively; nevertheless, in practice it is never thought to have any place; for no case that is worthy can be certain such that the Bishop, bona fide in his election, may not have had some reasonable motive, unknown to the concurrent, by which he excludes another whom he considers more deserving. This implies itself, as stated by Lugo n. 89. The doubt arises: whether he who, openly recognizing another as more worthy, sins by accepting the Benefice and is bound to restore the damage to him?

The first opinion affirms what are held in 2 of n. 173. § 5 n. 1, likewise Sylvius and Tanner according to n. 374. Reason, because by accepting the benefit he contributes to an unjust election in the harm to another; yet the second opinion, which is held by 13 n. 2. 3 qu. 6 art. 2. Diana t. 2 tr. 5. etc., et c. dicit: eum nec peccare, nec tenendi ad restitutionem. Reason why he will not sin, because on one hand, as St. Thomas says in the second part, question 185, article 3, speaking about assumption to episcopate, that one who is to assume is bound to have a more symmetrical goodness regarding the governance of the Church; whereas, however, he who is

assumed says that it is not required for him to consider himself better than others... but it suffices that in himself he does not find anything by which his assumption to the office of prelate would be rendered illicit. From another aspect, he does not sin by cooperating with the sin of the confessor, since through the very act of confession, the bishop has already consummated the sin, and accidentally it happens that he either accepted or did not accept; according to what is stated in a similar case 1.3 n.492 q.8 v. But admitted.

As it is said: In our case accordingly. The reason why this one is not bound to restitution is because, once the benefit has been conferred upon him, another who is no longer more worthy does not have any greater right to it, insofar as the benefit then ceases to be among common goods: Just as if a thing sold to two persons is delivered to the latter purchaser, this one is not bound to restore the purchased thing to the former purchaser, since by the act of delivery he has acquired dominion over that thing, and the right of the first purchaser has been extinguished. Although in our case a more dignified claim may be conceded, the granting remains valid in both forums, and the one elected cannot be removed from the acquired benefit unless the grant is invalidated by the judgment of the judge, as we said in no. 102. And this sentence seems more probable to me; all the more so, because, just as the elect who is worthy can lawfully petition for the benefit, as stated in the preceding doubt; similarly he can also accept it, since he can never be certain that the conferring was unjust. Hence he says probably n. 70 that if you certainly think that the Bishop has preferred you to him by favor and not by judgment, this should not be imputed to you, if the Benefice was not offered to you solicitously, or if you have solicited it in good faith; for the Church seems to have these collations made in favor of those who are concurrents, so that they may not henceforth continually be burdened with scruples, as is evident from c. 7, cap. 3, where it is prescribed that Benefices should be conferred on the worthy... otherwise... if such a collation were made... altogether: it would irritate. Therefore, the collations made to the worthy are regarded as ratified for those already assumed.

Moreover - indeed you say in loco citato n. 3 that commonly the Oppositores 462 Lib. IV. Concerning the precepts particularibus, etc., let them be excused from sin, because no one considers himself less worthy and capable of valuing sincerely what, if another exceeds in one thing, he himself should exceed in another. Question. VIII. Are the Examinators bound to notify the Bishop of those more worthy?

The first opinion denies with Lug. D. 35 n. 66. . c. § 4 n. 9. Cross l. 4 n. 626 et n. 338 Et probant ex cix. c. 18. 24 ubi dicitur: Post factumque

deinde examinationem renuntientur quantilibet ab his idonei judicati fuerint aetate, moribus, doctrina, etc. Ex hisque episcopus eum eligat quem caeteris magis idoneum judicaverit. Therefore, as they say, from the words of the Council it is gathered that it belongs solely to the Examinators to denounce suitable candidates, so that the Bishop might invalidly choose someone whom they themselves would reject; but on the contrary, it belongs uniquely to the Bishop to judge who among them is more worthy. This is confirmed by Lugo ex Declaratione S. C. Concilii, quam refert, ubi dicitur: (S. Congregatio declaravit non pertinere ad examinatores, sed solum ad Episcopum judicare, quis ex concurrentibus ad Parochialem vacantem sit magis idoneus). Et in Sess. 24 tantum habetur, ut Examinatores peracto examine renuntient Episcopo quotcumque ab his idonei judicati fuerint. This judgment is indeed probable, but more probable to me is: the opposite second judgment, which is commonly held. De Ronc, c. 5, q. 9, r. 1 et.

Whereupon although from the words of the Council it does not follow an obligation for Examinators to denounce one as more worthy, yet it is nevertheless inferred from the mind of the Council. Neither does it hinder the Declaration obtained from the S.C., as stated above, because there is determined in that place nothing else with certainty except that the Bishop should judge concerning the greater dignity of opposites, and this is certain; but in that place they do not say that Examinators are bound to explain to the Bishop whom they themselves consider more fit, so that the mind of the Council may be preserved. Chapter Two. Dub. I. On the State of Clerics. 463 mùm here it must be noted that examiners should take a vow of fidelity to their Office, as is prescribed in Trident; otherwise, there would be no assembly, as the Council declared.

Congr. Concilium, die 2 Decembrii 1628. ## ARTICULUS TERTIUS. ## Quæ intentio et qualitates requirantur ad Beneficium accipiendum? Qualis quality requiratur in eo cui Beneficium conferitur? An requiratur in eo voluntas clericandi? How will he sin who receives the benefit simply with an intent to later marry? Does he gravely sin who receives the curate's benefice with a doubtful intention of subsequently accepting the priesthood within a year? Resp. In order that some benefit be validly and licitly obtained, it is required that there be a person capable and qualified, namely, one who is clerical, not illegitimate (although the bishop can dispense to minor orders and simple benefices which are not annexed to a major order), not irregular, excommunicated, not wicked, nor infamous; so as to have competent knowledge for the office annexed to the benefit, and an appropriate age; unless it is dispensed otherwise, namely for a simple benefice up to fourteen years (yet even fifteen inchoate years suffice, teaches also another five).* (With Gonzal. . . De Pro eo quod Diaconatum,

twenty-second according to. For the reason that the priesthood, inchoated twenty-fourth; (That is to say, with regard to age being deficient, even as regards one hour, provision of the benefice is null: It is common with . . 20.

Resp. 2. Whoever receives any Benefice having attached to it the Sacred Order, is bound by law to have at least a conditionally willing intention within the time required for clerical service and for receiving the Sacred Order. The reason is that he who accepts an Office with an obligation annexed thereto must in every way prepare himself accordingly; moreover, if said Office is curatorial or parochial, and he has the intention of not accepting the priesthood within a year but rather of resigning the parish, he commits no moral sin, yet by law itself he is deprived, and is bound to restore any fruits, as is evident from chapter Commissa § 7 de elect. in 6. If, however, with a changed will, before the end of the year, the Priest becomes such, he can retain the fruits; *(The same teach, n. 190.)* And thus it must be held against Soto: because if he is not annexed [to the Order], and the Benefice is simple, although he may accept it with the intention of earning a profit and subsequently marrying a wife, he will not sin otherwise than venially, provided that he fulfill his office in another way, as they teach. Hence such a one is excused from all guilt. Chapter II. Dub.

I. On the State of Clerics. I have spoken. A conditionally voluntaried will: because, "if later on account of a just cause the clerical status seems to suit him well, it is permissible for his mind to change, even if the benefice is curated, e.g., if the eldest son or the only brother without children leaves: if an excellent marriage is offered that is necessary for the preservation of a noble family or to appease serious lawsuits." The reason is, because it is not the mind of the Church to obligate a clerical state in such a way that these and similar goods are impeded, loc. cit. "Question NoneHere I."

How he sins who receives a simple benefit with intent thereafter to take a wife, and then dismisses the benefit? It is certain that he gravely sins, if the Beneficium have annexed to it a Sacred Order, as commonly taught by Busemb. as was said above, and 7 de Matrim. D. 45 n. 14. . 13 . 18 c. 200. When Soto says, If however the Sacred Order does not have an annexed Benefice, there are three opinions: The first, which those hold, say that he is still mortal sinning, because a similar intention is a perversion of both the natural and divine order, establishing that benefits received should be only for the purpose of rendering obedience to God. Second opinion, which follows Palau, l.c., and Garcias, ap. Bus. supra, censet eum ne leviter quidem peccare, quia nullum apparet præceptum hoc prohibens.

Third medium opinion, which they uphold along with Bus., l.c., n. 19. and 4 tr., 2, c., 14, n. 11., that not to sin gravely in such matters is not such a great disorder as to merit damnation as mortal; for by no right can it be established that it is itself grave. But no precept (as correctly teach St. Antoninus and P. Concina, whose words we have quoted in l. 3 n. 547). (Cæterum.) Est hominibus sub gravi imponendum, nisi evidens ratio id suadcat. And from this principle, even previously betrayed according to D. 466 Lib. IV. On the Precepts of Particulars, etc., Question 114, Article.

II. If one sins gravely and is bound to restore the fruits, which one receives as a Beneficium curatum with intention, is it uncertain, or subject to conditional reception of the Priesthood within a year? 152 affirmant et Sotus, Auctor apud quia lex exigit veram intentionem suscipiendi etc. Sic enim habetur in cap. Commisso de El:ct. in 6: Cæterum, si promoveri ad Sacerdotium non intendens, Parochialis ecclesiam receperis ut fructus ex ea per annum recipiis; ipsam postea dimitturus (nisi voluntate mutata promotus fueris), tenearis ad restitutionem fructuum eorumdem cum eos receperis fraudulenter. They indeed deny 186, because the text speaks of him who receives fraudulently the Benefice; but they do not say that he receives fraudulently. Rather, he who receives with a doubtful or conditional mind. However, others hold that Bus. 2 c. 34 n. 131 et 133. . c. 45. n. 10. and those who cite it do not consider one who truly receives under condition, because here he has the true intention, although conditioned. But the first opinion seems to me more plausible, because the intention, so that it may not be fraudulent, ought to be determined absolutely with regard to receiving the benefit. ## ARTICULUS IV. ## May one have more than one Benefit?

And to what extent are those who hold Benefices bound to Residence? Is it permissible to hold more than one benefice, and when? See elsewhere in Busemb. How manyfold may Benefices be? And what things are incompatible? And whether, having obtained a second benefice in any way incompatible with it, the first one becomes vacant? 117 Is plurality of benefices forbidden by Divine Law or positive law? 118 What reason would justify the plurality of benefices? Cap. II. Doubt.

I. On the State of Clerics. 419 On the Obligation of Residence. See what is found at ap. Busemb. 120 To whom among the Beneficiaries are Residence obligations imposed? 121 Q. I. Why are Curates bound to reside by Divine Law? 122 What is notable concerning the Residence of Bishops? 123 What concerning the Residence of Parishes? Dub. 1.

Do the parrochi require a license in writing? Dub. 2. Whether parishes having a just cause can be absent for two months without license? What if

some necessity should arise? What if they are absent for a brief time? 124 Qu. II. Wherein the Beneficiary is bound to reside?

And especially where Bishops? And where are the Parishes? I. Q. 125. What causes excuse Pastors from Residence? And E. Concerning the cause of Charity. II.

Of the cause of Necessity. III. Of the cause of obedience. IV. On the Cause of Utility. Question 126, Article IV. When and how are non-resident pastors bound to restore the fruits of Benefices? 127 Doubt 1.

What if they are absent with just cause, but without permission? Dub. 2. What if their absence is without fault? Dub. 3. What if they reside uselessly? And whether parish priests are bound of themselves to exercise the more important duties?

Dub. 4. Whether non-residents are bound to restore the fruits? To whom ought the fruits be restored by non-residents? Many things here concerning the residence of canons. What causes excuse canons from assisting in the choir? And I. Concerning the cause of Infirmitas. Dub. 1. Are old people excused per se for their infirmities?

Dub. 2. Are the blind and the deaf excused? II: On the Cause of Necessity. What if someone is absent from the Choir by reason of excommunication which he incurs? What if the Church were under interdict? What if it is polluted?

Whether irregular Canons shall lose Distributions and the fruits of Prebends? III. On the Cause of Utility. 131. What about the Penitentiary Canon? What about the Theologian, the Examiners, the Visitors, etc.? 132 What about the Canonical Teachers? Whether the parochial teachers rejoice in the same privilege? What about those studying Canons, and Parish priests?

Resp. To possess many benefices is not a thing intrinsically and seriously evil, nor altogether indifferent, but rather a semblance of evil, nay more commonly cited as such, and repugnant to natural law (if such things be so, one of which suffices for honest sustenance), unless a just cause render it seemly by circumstances. Thus it is nearly . 4 t. 2 c. 8 n. 1 ex S. Thomae . etc. comm. Because, as it is taught in c. 17. The ecclesiastical order is perverted when one cleric occupies himself with many offices; for such plurality has brought about great disorder by diminishing divine worship, and by depriving the Church's charitable works, founded with pious intent,

of support, thereby depriving the poor of future sustenance for the maintenance of the Church. Hence beneficia are distinguished into incompatibilia of the first genus, in which, having obtained a peaceful possession secondarily, there is previously vacated; such as many curatorial beneficia; also several dignities, personates, two uniform beneficia under one roof: and in incompatibilia of the second genus, which although they cannot be obtained without sin prior to dismissal, are nevertheless not vacated first by obtaining the other: such as beneficia that require a residence after being received, for example, canonicates of two different churches, in which it has been constituted so that canonicals may not be absent from the church for more than three months.

Wherefore * (See no. seq. 11 v. Notandum).* I said, unless a just cause be assigned; for he who through dispensation has obtained many benefits, if there subsist not a just cause, will not be safe in conscience, but would be held to resign one of them, as teaches 2 c. 24 n. 151. » But a just cause for dispensation will be evident necessity and utility of the Church, and sometimes also prevenient merit, such as, for example, notable nobility, dignity, science, authority, virtue, etc., provided that it is guarded so that the accumulation of benefits, even made on account of prerogative of person, may not refer to the private good alone, and not to the common good. But without dispensation, multiple Benefits can be held in the following cases. ## Cap. II. Dub. I. Imò sine dispensatione plura Beneficia sequentibus casibus haberi possunt. ## Cap. II.

Dub. On the State of Clerics. 1. If both are so slender that neither suffices for sustenance, let both be simple and require no residence. * (Sens 'igitur, si beneficia residentiam requirant, licet sint tenua; Crotx lib. 4 n. 918 with the common.) * 2. When a parish is annexed to a Camonicatus and is accessory to it; then both are possessed in the manner of one, albeit in such a way that a perpetual vicar must be maintained in the Church.

When the parish is annexed to a camonicate, and is accessory to it; then both are held as one in manner, so however that a perpetual vicar be maintained in the church. When the benefices are legitimately united. » 4. When benefits rightly are united. When another one who is fitting and worthy cannot be found. 5. Quando autem alius idonus et dignus non reperitur. When one benefice is held under a title, another is held in commendam, not perpetual but for a few months, until provision is made for an appropriate person.

Ita Rex ex Syllo. Other benefices are simple, insofar as they are established merely for the purpose of fulfilling prayers to God and for the service of the altar, namely Canonicates; Chaplaincies erected by Pontifical or

Episcopal authority, Prebends which are given to Clerics for pursuing their studies, and similar ones. Others are Duplicia, namely those which have some jurisdiction, preeminence, or administration; such as Dignities, etc., as will be explained below. Other benefits are Computibiles, other Incompatibles. And some of these are incompatibles of the first kind, namely curacies and uniformities under the same roof, that is to say those which concur with the same functions at the same place and time; likewise dignities, personages, and offices. Dignitates sunt quibus est annexa aliqua jurisdiction supra Clerum aut Populum ut sunt Episcopatus Abbatiæ Decanatus Praepositurae Archipresbyteratus Archidiaconatus.

Personatus autem sunt, qui habent præeminentiām aliquam supra Clerum; sed sine jurisdictione, ut sunt munera Primicerii, Præcentoris sive Cantoris, et Sacristae primarii. Offices again are those of the Treasurer, Preceptor, Custos, or Sub-Sacristan, Econome, etc., to some of which is annexed certain administration, without jurisdiction, Lib. 470. IV. Regarding the particular precepts, etc., nevertheless with preeminence. Other are incompatible with the second kind, such as the Canonical and all which require residence. But it should be noted that, if anyone obtains two.

Beneficia incompatibilia, obtento secundo, vacet ipso jure primum; et si ille utrumque retinere praesumat, ipso pariter jure utroque Beneficio privetur. These things are certain as regards incompatible benefits of the first kind, according to the seventh session and chapter two, and the twenty-fourth session and chapter seventeen of Trent; also from the canon De multa; de. Preb. Extra-tract. execrable, from Præb. and Præb., p. 76 n. 48 ad n. 9. . 28 de ex Declaratione S. C. idemque dicunt . But it denies n. 115 and n. 415 with wings: and the same is understood . 3 Consil. 24 de Præb., saying that if it were certain that the S. C. had declared what should be understood by Tridentine, such a Declaration would have been confirmed by the Pontiff, and then thus it would have to be held; but since this is not certain, and other things from the words of the Council do not seem effectively to prove it, there is nothing that binds us to the first understanding.

Forasmuch, however, the Council in the aforementioned place first mentioned speaks indeed about presumptuously retaining two benefits which are somehow incompatible, namely those that require residence, and it says that they are ipso jure deprived of both benefits, but it does not say a word about the vacation of the first on account of the consecution of the second. In posteriori autem loco, nempe sas. 24 cap. 17, ubi præscribit vacare primum Beneficium, obten- to secundo, loquitur tantùm de Beneficiis curatis, nimirùm Episcopalibus, si Parochialibus. However, notwithstanding this, it is nevertheless praised. The Sacred Congregation

declares when it is approved by many, especially by Fagnano, who was a diligent inquisitor, that this Declaration pleases us more to adhere to the first judgment, but we do not disapprove the second. He notes in volume 4, page 2, chapter 8, note 4 at the end, that having a personated office with care in the Church, one can also have there annexed canonical rights, to which the parochial church is joined, and which should be administered by a vicar, according to the same chapter on the Prebendary in 6. Furthermore, it is to be noted with regard to the State in question, this is evident from the aforementioned location with Bellarm.

Panorm. Wig. et Polet. This question, however, greatly arises: whether the plurality of Beneficia is forbidden not only according to canonical law, but also according to natural law? The first opinion denies this, as stated in no. 1 and c. Jamdu-dum de Praebendis no. 2, likewise Filiuc. Lugo, in Tusc., l. 4, n. 902. Because, as they say, if this were contrary to natural law, the Pope would not frequently dispense in such plurality, as we see it to be customary.

The second opinion, which 774 art. 2 and n. 655 hold absolutely affirms both regarding double benefices as well as simple ones. Reason, firstly because one cannot sufficiently serve two Churches, and secondly because the intention of the Founders was such that there should be more to serve the Churches; and therefore they said that the pluralities of Benefices were expressly condemned in 24 de Ref., cap. 17, where it is thus stated: When the ecclesiastical order is perverted, and one cleric occupies the offices of many, sacred canons have carefully provided that no one should be in two Churches. IV. Because many, through the affection of various corrupt desires, do not deceive God by themselves being chaste, the holy Synod, desiring to restore proper governance to the Churches with due discipline, in this present decree commands that it be observed and established, so that in future only one ecclesiastical benefice be granted to each individual under any title, even if they shine with the honor of cardinalate. That which, if for the honorable sustenance of his life, to whom it is conferred, does not suffice, may be granted another simple sufficiency, provided that neither requires personal residence; and then may this be conferred upon him. These things pertain not only to cathedral churches, but also to all other benefices, whether secular or regular, commendatory or otherwise, whatever their titles and qualities may be.

The third common and tenable opinion (although once I held it to be the first plausible one) teaches that pluralty of Benefices, whether of simples or doubles, in itself suffices for a congruous sustenance according to reasons shortly adduced and other many inconveniences arising from the pluralty of Benefices enumerated by John XXII in the Extrav. Detestable

indeed, but not in such a way that it cannot be justified by some circumstances. Therefore, St. Thomas. What book 9, article 15, which follows. Chapter 34, note 137. Part 2, chapter 8, note 2. Decretals 6, part 4, number 26. Canon 12, question 7. Abelly Holzrn., tom. 1, p. 431, n. 417. c.) qui ait: "dispensationem Pontificis neminem tutum reddere, nisi adsit urgentissima causa, et Ecclesiæ necessaria." However, those causes that justify the plurality of benefits, according to common D. opinion, are I.

Necessitas Ecclesiae, namely if other ministers adequate are lacking; thus P. 171 n. 7. Anacl. pag. 417 n. 16. et et alii, ex D. Thoma, qui docet cit. art. i5., tunc posse alicui conferri plura Beneficia; si sit necessitas in pluribus Ecclesiis ejus obsequio, et ipse possit plus deservire Ecclesia, vel tantumdem absens quam alius praesens, verba S. Doctoris. II. The utility of the Church, namely, if one alone, although absent, is deemed more likely to profit by his authority; doctrine and prudence rather than another's presence. Ita Holzmann. tom. 1 pag. 431 n. 418. Conc. l. cit. et cum Pirhing.

Hence he adds: for this reason, at times more than one Episcopal office is conferred upon the sons of princes even before their age, so that the Church may more powerfully defend itself against heretics. III. Evident meritocratic privilege, namely if someone should excel in doctrine, counsel, instruction, or writing. Thus. IV treatise 2 chapter 3 note 2. Anacl. l. cit., n. 18; et Holzrn. d. n. 418, ex c. De multa. §. fin. de Praeb., ubi dicitur: Nullus plures dignitates aut personatus habere praesumat, etiamsi Curam non habeant Antimarum; circa sublimes tamen et litteratas personas, quae majoribus sunt honorandae beneficiis, cum ratio postulaverit, per Sedem Apostolicam poterit dispensari. And this is consonant with the doctrine of the Apostle, in 1 Timothy 5:17, where he says: "They that rule well shall have double honor (that is to say, by reason of gifts of munificence), as Hieronymus explains in chapter r5."

Those are accounted worthy of honor; above all those who labor in the word and doctrine. It is asked whether simple benefits, if someone having one sufficient benefit for his proper sustenance receives additional benefits without cause, does it ipso jure become vacant? Holzrn. denies it in tom. 1 pag. 431 n. 415; likewise Gonzalez, and Flaminius according to de 62 n. 3.; and S. D., which the same Fagn. and Garcias refer to, for this seems more consonant with the words, or at least with the mind of Trent. You inquire whether and in what manner clerics are bound to residence? Resp. 1. Bishops; Parishes; and those who have a care for a Benefice, are divinely bound by this right.

It is not sufficient if they administer through others, unless a greater burden be imposed: because it is against reason that this office and its fruit should bear another burden. Bonaventura I, 1. D. 5 de oblig. Response 2. It must be held that they are bound to residence, so that if Bishops exceed three years, and Parishes two months without a legitimate cause known to and approved by the Bishop, they commit a mortal sin, and no fruit will result from it. Thus in the Third Session, Chapter One of the Reform, Article V.

Bonac. 1. c. Notat autem 7 R. 53 ex Bard, supradicta etiam habere locum in Superiorebus, sive Praelatis Regularibus;ideoque eos teneri tempore pestis etiam cum periculo suis assistere. Response 3. Those who hold dignities in Cathedral or Collegiate Churches, such as Canonicatus, prebends, or portions* (Item all Mansionarii, and others who have a perpetual Beneficium in Collegiatis with choir service annexed, as it is said 28 n. 142. ex Declar.) The Sacred College, on the contrary, excuses them if others serve the Church; but if they absent themselves for more than three months within the first year, half the fruits will be withheld from them, and in the second year all the fruits which they have gained that year will be withheld from them. Which nevertheless is the penalty of the sentence to be executed, and not of that which has been already executed: as is evident from Responsum 4. Excusing causes from residence, 1.

Lecture in Theology, or Canon Law; nor is permission required for a Prelate or Bishop for this: but rather for Lectures on the humanities and Philosophy, unless custom provides otherwise. Study of Theology, or of Jurisprudence Canonica; porque esto excusa por cinco años. Obedience to the Pope, or Bishops, for the utility of the Church. 4. License legitima ex quavis alia justa causa. 5. A honesta consuetudinem dinis, ubi dispositio concilii non est recepta. V.

Bon. l. c. Resp. 5. Qui absque justa causa abest, peccat mortaliter, non tamen tenetur ad restitutionem fructus, si officio satisfecerit; nisi ad eam condemnetur, vel nisi id aliquo jure sit expressum. Response 6. Those who are absent for a legitimate cause do not profit from distributions according to » . 2. cap. 34. dub. 29. Here are many things necessary for knowledge and practice concerning this matter of residence, which is understood as a dwelling in the place of the Benefice to render personal obsequies ecclesiastical. Whereby Sylvester rightly says that those who are in the place of Benefice but do not perform the due offices thereof are not to be considered as residing there, as is better explained below.

That it may be certain and known that formerly according to common law all simple residence would be carried out, as is evident from chapter

Clericus, Distinction 91, and chapter Ex parte 8 of De Clericis, non reside. But today they do not require such residence from those who are in the place of Benefice, since the service can suffice through the Vicar, unless the Founders have expressed otherwise. Thus commonly continues Continuat. Tourney tom. 3 pag. 29. 433. n. 425. 24 c. 17 n. 18. cum . Reg. and Sporer, tom. 3, de Statu Cleric., pag. 73, n. 22, qui de hoc refert: Decretum S. C.: Only today are all Pastors who have care of Souls obliged to residence, and all Canons or Prebendaries, etc. of Cathedrals or Collegiate Churches, of which we shall speak later below. It is asked I.

All those having care of souls are bound by law to residence today, as the Decretum S. C. Tan-tum hodie ad residentiam obligantur omnes Pastores curam Animarum habentes, et omnes Canonici sive Praebendati, etc. Cathedralium sive Collegiatarum, de quibus infra postea agemus. Quæritur I. Sed omnino tenexdum, ad id obligari de jure Divino, ut communiter cum Busemb docent x c. 34 n. 153. Tournely tome 3 page 29. Petrocor. tom. 4 pag. 503. Analecta de Beneficiis, pag. 414, n. 68. Roncaglia ibidem titulus caput secundum quaestio tertia respondens secundo capitulum pag. 73 n. 23 cum et citatum n. 94 cum aliis innumeris. And it is proven from 23, chapter 1, of De Ref., where although this was not explicitly defined, it was nevertheless held as a certain proposition in these words: Since the Divine precept has been given to all those to whom the care of souls has been entrusted, to recognize their sheep, to offer sacrifice for them, to pasture them with the preaching of the Divine Word, the administration of the Sacraments, and by example of all good works, to manage the paternal care of the poor and other miserable persons, and to undertake other pastoral duties; these things can in no way be performed or fulfilled by those who do not watch over their flock, nor assist them, but desert them in a mercenary manner; etc. Decl.

The Sacred Synod, all... cathedrals' prefects... even if other sacred things cannot be provided and fulfilled by those who do not watch over their flock, nor assist, but desert it in a mercenary manner. Benedictus XIV clare declaravit in sua Bulla Ubi primum edita secundo quadragésimo tertio sectionis quarta. December 1740. (See in Bullar. p. 4.) Postquam enim ibi dixit: tenèri Pastores de jure Divino suis ovibus assistere, ut eas pascant verbo et exemplo; mox subdit: Itaque in statione vestra maneátis oportet, et personalis in Ecclesia vestra vel Diæcesi servetis Residentiam, ad quam ex vi muneris vestri (nota) obligati estis. Hence well say Tournely pag. 31. and Croix l. 4 n. 865. with Lugo, that the Pope cannot dispense in this matter, but only be able to declare something in some case where Divine Law does not oblige, provided just causes intervene, of which see below 2. 125.. But this must be noted I. from the same Council, granted to Bishops, that they may absent themselves from their Churches for two or three

months, these words: For those who are absent only occasionally, according to the sense of the ancient Canons do not seem to be absent, and will immediately return; The Sacred Synod wishes this period of absence to be each year, either continuous or interrupted, except for the aforementioned causes, under no circumstances to exceed two or three months. Whereupon Roncaglia c. 2 q. 3 R. 2. . 526 n. 360. and with Attamen Palus D. 5 p. 4 n. 1. cap. 4§. 2 n. 147. et 441 n. 2 with others, say that the aforementioned causes are not deemed sufficient, unless perhaps for a month, which is truly ample enough to relax one's mind; whereas on the contrary, the Council judges these (i.e., those proportionate to such absence) as sufficient and remits them to the consciences of the Bishops, and earnestly admonishes them lest they expose themselves to danger of salvation through this: thus in the same chapter 1. Trident. immediately under the referred words submits: And to have a reason, that this may be made equal from an equal cause, and without any detriment to the flock; which whether it is so, it leaves to the conscience of those who abstain, whom it hopes will be religious and fearful, when God's heart is open, whose work is not done fraudulently, but at their own risk.

They note, however, that the Council itself admonishes the Bishops, lest they absent themselves from their own Cathedral Churches at the times of Advent, Lent, Nativity, and Resurrection of the Lord, as well as Pentecost and the feasts of the Body of Christ. Verum vero causae supra allatae sufficiant ad excuandum absentiam Episcoporum pro tribus mensibus à concessis Tridentinis, vel causae majores his requiruntur? Consider what our most holy father has said on this point in two places. P. Benedict. XIV, Nam in uno videtur causam absolute gravem requirere ad excu-sandum; in altero vero solas causas futiles excludit. In the words of the Pontiff in the Bull which begins 'Grave etc.' issued on the day of November.

IV. On Precepts particular, etc. 21. August 1741 (in the sixty-third year), while writing there to the Bishops of Ireland and complaining that they scarcely reside in their dioceses for a month, he said thus: Bishops indeed never sufficiently fulfill the duty of residing, who govern the Church through a substitute or Vicar appointed by another person, unless perhaps for a brief time and on grave cause. In another Bull, which begins Ad universæ, issued on the day of the 3rd. September 1746. (in Bullar. tom. 2. pag. 28.) declaring what the requisite just cause is from Trent for the triennial absence of Bishops, he says: Lightness of heart, cupidity for pleasures, and certain frivolous causes are excluded. Furthermore, concerning this Episcopal Residence, many other things ought to be diligently noted here, which are contained in the Bull Ad Universæ, previously cited above.

Before all things, they are confirmed and it is commanded to observe in the virtue of holy obedience the decrees issued on this matter by Pius IV. Gregor. XIII. et Clem. Eighth. And especially, the Decrees of Urban VIII are renewed, concerning which a prescription of one year had been established. That in the curia Bishops may remain in Rome for a month (whoever, however, by the concession of Benedict.

XIII. prorogari potest per alios 40 dies a Vicario Pontificis). 2. That bishops approaching the thresholds of the Apostles may be absent according to the times established for four months, and for seven months if their churches are situated beyond sea or mountains. 3. That if Bishops are to be occupied in Provincial Councils, or Congregations of Ecclesiastics, or in Offices of the Republic which are annexed to their Episcopates, they may for a time absent themselves therefrom necessaryiter. 4. That bishops may not join the three-month absence granted by Trent with the time in which they are bound to remain present; whether it be that which is conceded to them for visiting sacred thresholds; or that which permits them to dwell outside their diocese on account of the unhealthiness of the air; nor may they join a three-month period of one year with the three months of the following year. Therefore the same Benedict. XIV. In the aforementioned Bull, he renews the penalties imposed on Bishops who do not reside, which were granted by Trident. 23 cap. 1.

Moreover, he innovates the penalty of depriving the ability to make a will and dispose of property, if such penalties are completed by those who transgress in this manner, imposed by Pius IV; moreover, he also introduces the penalty of incapacitation from obtaining greater dignities and churches, indicted by Clement. VIII. quibus addit privationem omnium privilegiorum; quae transgressoribus tamquam pontifici solio assistentibus concessa fuerint. Furthermore, it declares what is meant by those named Transgressors, using these words: Those named under the title of Transgressors are not to be understood as including only those who, beyond three months from the Council, have acted without legitimate cause and without the express Notandum II. Which likewise do not excuse them from 23 grav.cul., and from the restoration of parochial fruits for those who do not reside there, as the same Tridentine declares. And they are bound to reside wherever the benefice, however small it may be, is located; this they say and not otherwise; but the same Tridentine Council has decreed it, loc. cit. Parochi non possunt discedere à suis Ecclesiis ultra bimestre, nisi ex gravi causa et cum licentia Episcopi in scriptis; nec infra bimestre, nisi idem ipsorum Episcopus causam approbaverit et Vicarium substitutum.

Words of the Council: Exactly the same. Even as regards guilt, remission of

fruits, and penalties for curates of lower churches... The Sacred Synod declares and decrees: Provided always that whenever it shall have come to pass that they are absent on account of a cause previously known and approved by the Bishop, an appropriate Vicar is to be appointed by the same Ordinary with due assignment of remuneration. Licentia autem concedenda in scriptis et gratis ultra bimestre tempus discedendi, nisi ex gravi causa, non habebitur. Here however there is doubt I: whether the aforementioned license may be granted gratis beyond two months' time except for a grave cause. IV. From the first and second chapters, number fifteen-eight and others in book one. Bonac. de Benef.

D. 5 p. 5 num. 17 dicentibus, Scripturam requirere tantum pro foro externo, non autem ad yalorem concessionis affirmant; vero 6 cap. 16 n. 31. Palaus tract. 13 D. 5 p. 5 n. 8 et At, cum hoc non constet, non puto improbabilem opinionem Lessii, quam tenet etiam . 1 n. 739 imo Coni chius, et Reg. ibid. dicunt, sufficere licentiam tacitam, saltem si talia concurrant signa, ut constet Episcopum actu consentire. Mazzota however says in tom. 2 pag. 412, that even presumptuous license suffices; but Croix. l.c. states that this presumptuous or interpretative license is not to be admitted by anyone. See the aforementioned note number 18. Second. But the Sacred Congregation of the Council (as noted by Father Zacharia ap).

It declared, however, that a license ought to be expressed; it is doubted whether a parish priest having a just cause for dismissal can absent himself for said two months without the bishop's license? The first opinion affirms that, and maintains it, 121. Cabass. T. J. 1. 5 c. 1 num. 4 item Bon. num. 117. probabilemque putant . 2 c. 34 nu. 159. Croix 1. 3 p. 1 num. 142. 7 cap. 4 q. 10 et 13 D. 5 n. 3 cum Sa, quando Pontifex in suum locum restitutus est. For an absence of two months, any honest cause suffices, as is evident from the words of Trent mentioned above; therefore, permission and proof from the Bishop are not required for such an absence, but only for an absence exceeding three months, for which the Bishop should approve the gravity of the cause.

The second opinion, which we follow, denies this and holds it to be otherwise. Eblel.to. 2 pag. 527 num. 362 qui opposi- tum vocat vix probabilem, 9. 4. R. 2. . 1 p. 433 num. 428 et . c. cum C. apud Garcia. Reason, because although a serious cause for departing by boat is not demanded by the Council itself, nevertheless absolutely it is required that the cause be acknowledged and proven by the Bishop when ever such a cause has come to pass, that it had been previously known and approved by the Bishop. The more so, because the parish priest is forbidden by the Council to depart unless his vicar, who is left behind, be previously approved by the Bishop. However, it is said whether this strictness is

commonly received, n. 159?

I believe... to be not commonly received as such. Si autem Episcopus jam causam et Vicarium approbaverit, nulla alia licentia requiritur ad discedendum, ut patet ex verbis Concilii supra relatis num. 123. However, it lawfully could happen that the Parochus be absent for a brief time without license, if some necessity occur which does not permit delay in going to the Bishop, provided that an appropriate Vicar remain, as Sporei say tom. 3 p. 744 n. 30 Eblel p. 534 n. 379 with common and C: Concil. as P. 3 p. 1 notes ad n. 740 indicates. However, it is necessary for the Bishop to notify his departure and the reason thereof, so that he may investigate the cause and, at least subsequently, grant permission; unless a speedy return is made, according to Eblel with Garcia, Sporer et al., cum Fug. Abb. Anacl. etc. Item, à cause de la petitesse de la matière, le Parochus pourra être excusé saltem à peccatum mortale si il quitte par un court espace de temps, comme le disent communément les Docteurs; néanmoins qu'il ne laisse point les malades dans l'article de la mort.

How much, however, is this brief period of time? The Sacred Constitution of the Council as related by Garcia thus declares explicitly: "The Parish Priest cannot be." Lib. IV. Regarding particular precepts, etc., to be absent without permission for an entire week, it is permitted to leave a suitable Vicar approved by the Ordinary. Nevertheless, commonly it is admitted, page 74, line 31, paragraph 427, that a parish priest does not commit a grave sin by being absent without permission for six or seven days, provided that an appropriate vicar has been left behind; But Tourn. page 34, note 5.

Cabanis. lib. 5 cap. 1 n. 4. . lib. 7 D. 71 n. 11 et Reg. Valer. apud Verum, per Synodum Rumäniam sub Benedicto XIII tit. 15 c. 6 vetitum fuit Parochis, ne discederent à Cura ultra biduum sine Episcopi vel Vicarii Generalis licentia in scriptis: sed per aliquos viros probostamquàm certum mihi fuit affirmatum, præfatam Synodum non fuisse in nostro Regno receptam. However, I do not assent to the opinion held by La Croix in lib. 3 p. 1 n. 741 where he says that a parish priest does not sin gravely if he is absent for two months without permission, provided there is a reason and no serious harm comes to the flock: because (as he says) this is not of itself evil; otherwise, the Council would never have admitted absence for two months even with prior permission: which permission should not be sought in that case, he considers it not to be a grave matter. But it is shown therefrom, Bonae; whence Navqur. Whatever, however, it may be concerning these matters, the Bishop can properly prohibit the Parishes from completely departing from their own Churches, so that they may not be bound by excommunication even for two days, as Bonac say. D. 5 p. 3

n. 8 Decree of the Sacred Congregation ap.

Garc. et 124 Quæreitur II. Wherein are the beneficiaries bound to reside? The Pope is bound to reside in Rome, as are also the Cardinals; thus Ronc, de 28 n. 97. But as to bishops, others say they are bound to reside in their cathedral church; and this is not enough. If they reside within the Diocese, so as not to reside. Roncag. l. c. with . 73 n. 25 exc.

Placuit, ut nemini sit facultas, relicti principali Cathedri, ad aliquam Ecclesiam in Diocesi constitutam se conferre, vel in re propria diutius; quidem oporteat constituam curam vel frequentationem propriae Cathedrae negligere. If however a Bishop has two Cathedrals, he can reside where he pleases, as is stated in the Bull of Urban VIII. However, others more truly, as Hol. tom. i p. 433 n. 426, Cabass. T. J. lib. 5 c. 1 n. 2 eisque adhaeret D. 5 p. 3 n. 5, dicunt posse residere Episcopum in quocumque loco suae Diocesis; et de hoc videtur non posse dubitari, cum in Tridentino expressè dicantur Episcopi obligari ad personalem in sua Ecclesia vel Diocesi residentiam. The same was declared by N. P. in the Bull which begins with, Ubi primum, issued on 3 December 1740 §. 4, saying: You shall maintain a personal residence in your Church or Diocese. Parochi autem debent habitare in domo suae Ecclesiæ, si ibi adest; si vero non adest, debent residere in alia domo, quæ sit intra limites Parochiae, saltèm moraliter, nempe, quæ sit ità propinqua Ecclesiae Parochiali, ut commodè possit ei inservire: et quò Parochiani facile queant ad ipsum recurrere pro sacramentis suscipiendis; ita Palau tract. 13 D. 5 part. 2 n. 1.

Good [or perhaps "Beneficial"] of Benefice. D. 5 p. 5 n. 4 et . 28 n. 110 cum . et . cc. nequaquam residentem cen- seri Parochum, qui habitaret procul à sua Ecclesia per tria, aut quatuor milliaria; imò etiàm per duo, ut non irrationabiliter sentit Croiz. lib. 3 p. 2 n. 745. But ibidem adds with Luke, a parish priest who should have two parishes perpetually united, whose one is no more dignified, nor more frequented, nor existing in the city, will be able to reside in that which he wishes: as . with . What is sought III. What are the causes excusing Bishops and Parishes from residence? Four causes are assigned by the Twenty-third Session of Trent, namely Christian charters, urgent necessity, due obedience, and the utility of the Church or State.

The Council, however, has decreed that causes for excusing Bishops from residence be approved either in writing or by the Pontiff or by the Metropolitan, or even by an older Suffragan Bishop residing there, who should approve the absence of the Metropolitan. But now always to be recourseable to the Pope, as stated in no. 222 at the end. As regards parishes, causes should be approved by their respective ordinaries, as we

have already said above. But with regard to the aforementioned causes, they should be dealt with individually. And I. On account of the charity of Christians, the Pastors of Souls are excused if they should be absent to compose enmities, especially those involving powerful individuals; thus 4.

Barbos. Al. 53. . 434 n. 428. . 1 pag. 527 n. 363. Tourn. tom. 3 pag. 33. Vasq. etc., vel ad opitulan-dum alteri Ecclesiæ, quæ indiget eorum prædicatio- ne, ut liberetur ab hæresi, vel aliis gravibus flagitiis: Palaus tr. 13 D. 5 p. 4 n. 4 item., et ll. cc. Modò, advertit Palaus cum hoc non fiat cum notabili detrimento proprie Ecclesiæ. II. Pastores excusat quidem ratione urgentis necessitatis, cum eis imminet periculum extrinsecum mortis a hostibus (vel gravis damni in bonis, ut ait Petrocorans 1 c.) dummodo præsentia Pastoris non sit necessaria ad salutem subditorum, nempe ad confirmandos eos in fide, vel ad ministrandum eis Sacramentis et alias sufficienter per Vicarios provi- datur, ut dooent communiter DD. cum S. Thom. 2 2 q 185 art 5 cujus verba retulimus lib 3 n 361 v.

Doubtful. Page 129. He says however non resid. n. 25 and 26 from the Decree. S. G., si quis parochus gravem habuerit inimicitiam, poterit discedere per sex menses constituto idoneo vicario et licentia obtenta; quae posset prorogari si inimicitia perdurasset; sed transacto anno debet parochus induci omnino ad resignandam vel permutandam c. n. 38. Sporer p. 74 n. 32 et p. 529 n. 170 et sic referunt Fag. et Sporer declarasse S. C. anno 1576 die 11 Octobris, instante Sancto Caroli Borromaei. And the same thing is to be said he says.

In this manner equally excused are the Pastors from residence on account of an intrinsic danger of infirmity, for instance if they were required to be absent from their own Churches because of unhealthiness of the air, as commonly Cajet teaches 2. 2 q. i85 art. 5. Petri de Tournai, pag. 33: 433 n. 428, 4 tr. 2 c. 6 n. 5 ex c. Praesentium 7 Q. 1 etc., ad audientiam de clericis non res. However, in this manner, as the chapters with Hic rightly observe, those rules are to be adverted to which Blessed [or Saint] Benedict has prescribed on this matter of infirmity. XIV in Bulla Ad universum supra relata; et quas mandavit servari ab iis ad quos spectat; in ea sic loquitur: Qui vero licentiam abortivandi petierint ratione infirmitatis extra Diocesanem contracto, dum vacante a Concilio induciantur uterentur, asserentes de causa regressum ad propriam Diocesanam sibi prohiberi, exponere debebunt qualitatem contractae infirmitatis et super ea testimonium Medici juramento firmatum exhibere. Et ubi licentia petita ipsi concedatur, semper ei ad certum ac definitum tempus concedenda debet esse, etiam adjiciens clausulam, si tamdiu infirmitas duraverit. From those, however, who shall have sought this kind of leave, saying that they need a change of air for recovery from the diseases contracted by residing

in their own churches, it will be expressed in prayers what sort of disease they labor under and how grave it is, and a testimony of the physicians, who by oath testify to it, will be presented as useful and necessary for the Orator, so that he may even transfer himself to some region and age for a time.

Neither should this silence be passed over, namely, whether the Orator, before being corrupted by disease, had been permitted the use of a three-month license from the Council: for if he has not done this, and the time granted by the Council is not deemed sufficient for him, it may be conceded to him that he remain absent from the residence for four months, within which months the Council's period will be comprehended; otherwise, if these are not complied with. Si mensibus conciliariis ab omni dolce et fraude remotis jam extra diocesim transierit, tantum tempus ei concedatur, quantum ad confirmandam ipsius salutem vere necessarium prudenter judicabitur. Whoever finally shall ask for permission to remain outside the Diocese on account of the malignity of the air, which in his own Diocese he asserts to be unhealthy at a particular time of the year; let him also see and again see what he should do: And what truly he will explain, by means of which months and years are pernicious. If the air of the Region.: Also, whether the same temper of heaven embrace the whole Diocese so that no place within its bounds can pass through such suspected time without detriment to health; finally, whether the use of Canonical months has been made. For indeed, si nondùm eos sibi sumpserit., non egre obtinebit Indultum abessendi per quatuor menses (quatenus periculum ab aere tamdiù du- rare eenseatur), in quibus tamen tres illi à Concilio permis- sì numerandi erunt: Si autem hujusmodi. The use of indulgences of the Council having already been made, to no purpose is a new one requested. He shall petition for the Indult of the aforementioned reason from the Apostolic See: and he himself shall be deemed to have acted wrongly, because, knowing with certainty that in a certain time of the year the air in his Diocese would be unwholesome, he did not reserve the granted months of vacation for that time.

In omnibus autem absentiae Indultis, quae ratione aeris insalubris imposterum concedentur, hanc clausulam adjici volumus: Dummodo intra Diocesim aliquis locus non adsit, in qua aer insalubris sit, et in quo Episcopus commorari possit. III. On account of due obedience, Bishops or Parishes are excused if absent, so that they may obey the Pontiff or their Ordinaries for the good of the Church or of the Republic, as they say: 5a7: n. 363. et . 433 n. 428. or from any other grave cause, as Tournely says, page 34. Provided that the absence be for a brief time; otherwise, absolute necessity of the common good is required, as when Cajetan says. Gonzal. Now however, whether the Bishop can retain the Parish so that it may be

his Vicar, Visitor, or Secretary?

They affirm. Oxeda, et alii apud Sed melius id negant Bonac. D. 5 q. 2 n. 4; Tournely page 34. Garcia, etc., articulum 3. quaestio 3. article 2 n. 8. qui refert, sanctam congregationem sic declarasse: episcopus non potest uti operd. Parochi in Visitatione, vel in alio servitio suo Diacesis, nisi pro tempore illi permisso duorum mensium. Palaus excepts in D. 5, p. 4, n. 9, with Vasquez IV.

On account of the Evidence of the Church, or of the State. Pastors are excused on account of utility if there is no reason for assisting Provincial or Diocesan Synods; either to defend themselves, their own people, or the Church before the Royal Court in a serious matter, as they say with Soto and Vasquez 5 p. 5 n. 12. (contrary to where it is said: If through not being present you would be accused of acting in fraud, your office will be prosecuted faithfully by residing therefrom.) This, however, is to be understood (as well observed . c.), provided that there be no other who can beneficially accomplish this himself. Furthermore, it is prescribed by the Blessed. XIV. In the Bull cited above, it is prescribed that the Bishop should set forth in these kinds of books the gravity of the suit and the causes by which it is deemed necessary for him to suffer; and whether he has already dealt with it during ecclesiastical councils: for if he has not done so, he should write again, that these may be used for this purpose; but if he has done so, let him be granted permission, that he may abstain not until the end of the suit, but only as long as necessity will require for Advocates and Judges to intervene. If however the case pertains to his own family, no other license is granted to him for conciliar months. Nevertheless, they must not be absent, even with the license of the Pontiff, to perform the Royal Office, Councilorship, etc., unless the common good requires it, as stated in n. 105.

But it is better understood thus, as Vasquez teaches in n. 9: if there are not others who can equally well and faithfully perform such offices... a26 - It is asked IV. When and how are Bishops and Parishes bound to the restoration of the fruits of their Benefices? Before everything, it should be adverted to what the Council of Trent has decreed on this point, for thus it prescribed in its decree: If anyone from a Patriarchal, Primatial, Metropolitan, or Cathedral see fit to any title... cease from their duties due to reasonable causes, and have remained absent from their Diocese for six continuous months outside thereof, they shall ipso jure incur the penalty of applying one-fourth part of the fruits of one year's fabric of the Church and alms to a Superior Ecclesiastic. Quod si per alios sex menses in hujusmodi absentia perseveraverit, aliam quartam partem fructuum similiter applicandam eo ipso omittat. Then declared it further, that bishops absent from their

church beyond three months, and without just cause: Besides the other penalties against non-residents imposed and innovated by Paul III., and the reatus of a mortal sin....., shall not make use of the fruits of their absence in proportion to the time absent, nor otherwise be held..... but shall be reserved..... for the Superior Ecclesiastic to dispose of those works. It is prohibited to assign to churches or places for the benefit of the poor any convention whatsoever.

Then concerning the Purification, he adds this: The same entirely, even that bread, the renunciation of fruits, and penalties, from the curates in inferior matters and care for health. The Synod has declared and described Chapter II. Doubt. I. On the State of Clerics. But it is doubted whether pastors of souls are bound by 127 to restore fruits if they are absent without permission, but with a just cause? Denies.

Reason, because such restitution is not owed unless the natural right of the contract is violated, which here is not violated; but rather when only the positive law is infringed, for then a sentence is required that punishment be incurred. But what the Bishops are otherwise to be said today according to the Bull referred to above N. S. S. P. Bened. XIV. To all where it may be decreed that if a Bishop abstains from attending Councils for more than a month without express permission from the Roman Pontiff, this shall be blessed as an act of transgression, and he shall not reap the fruits thereof, and other penalties imposed upon transgressors shall accrue to him. See n. 122 at the end.

There is doubt whether the fruits should be restored if the absence is imputable; because, namely, it was done in good faith and with an estimation of the excusing cause from the residence? They deny it according to Article 3, question and answer, and Garcia as quoted by Bonac. D. 5 p. 4 n. ro. Reason, because the obligation of restitution is either according to positive law as a penalty, and this is not owed except after a sentence; or it is according to natural law, and from the benignity of the Church it is presumed that she does not wish to damn the Beneficiary to such restitution, who in an innocent manner fails to fulfill his obligation; just as the Beneficiary, by omitting recitation of the Office innocently, is less bound to restore the fruits of the Benefice, as commonly taught by the Doctors, see said law 3 n. 665. let it be that many Authors think otherwise, Beneficiaries are held according to natural law to be bound to the Office; But I least of all acquiesce in this opinion, for I hold firmly that this obligation is not according to positive law, but according to natural and divine law, since Pastors are held according to natural and divine law to reside, as we have approved above n. 121 from Trentino. Therefore, given that Pastors are bound by natural law to residence, they

are so bound for no other reason than through a contract initiated between themselves and the Church, pursuant to which they receive the fruits of Benefices under the condition of residence; and if this condition is not fulfilled, even without fault, Pastors in no way acquire such fruits. The presumption, however, that the Church would remit such fruits to those who without guilt do not reside, is very doubtful; rather it is presumed that the Church wishes the opposite, so as not to leave open a way to evade this residence demanded with such strictness by the Church itself: All the more so, as N. P. Benedict has stated.

XIV. In citata Bulla Ad universae expresserit declarare tamquam transgressores et fructus non facere suos Episcopos qui sine legitima causa ab suis Ecclesiis abant. Nor does it hinder the equality of Beneficiaries who culpably omit the Office; for (as we said in 1.3 d. n. 665 and will say below in n. 145 Q. I.), commonly Doctors teach that, as Pius V. confesses where such restitution is prescribed to those who omit it. It is doubted whether those pastors are bound to restore their fruits who reside uselessly in their churches? Garcia denies this, and because (as they say) absence is strictly to be explained, hence always and never absent, the fruits can be gathered, satisfying their obligations through others. But the true affirmation is this: because the restitution of fruits truly, as we said, ought not only to be owed by them according to positive law on account of penalty, but also according to natural law on account of contract, or condition of residence in a contract aptly applied which has not been fulfilled, that condition which cannot be understood solely through bodily residence: moreover, even if restitution of fruits were not owed according to natural law, but only by reason of the penal law of Trent, pastors residing uselessly would still be bound to restore the fruits; for the Council in said session 23.c. after that declared them obligated to personal residence, added: where they are enjoined an office, they must needs discharge it. And in the Bull Gravissimus, Bened.

XIV. declaratur: residentia non esse vera, nisi sit formalis. Commonly, the Doctors generally say that a Parochus is not considered to reside there, unless he exercises the principal duties thereof, namely the administration of the Word of God, Sacraments, etc. And they say that Bishops, although themselves regularly bound according to custom do not have to preach and minister Sacraments by themselves, yet they should personally oversee so that these things be done through others, and furthermore instruct the flock by a good example and provide for the poor. It is stated that they are regulated, for I believe, at least sometimes, bishops to be held to preach, since according to the Council of Trent (cap. 1, sessio 23) they are bound by Divine law to pasture their flock with the preaching of the Word of God. This is declared by the same Council, Session 5, Chapter 2: All

Bishops... and Prelates are held of themselves, if legitimately hindered they have not been, to preach... But whoever shall have contemned this, shall be subject to punishment. Regarding the obligation of Parochi to preach and to administer Sacraments, see what is said in [the text] 3. 267. v. Here incidentally, and n. 358.

Hurtado sentit l. 3 de Resid. Paroch.. Resp. 9 contradicunt Sancium, non esse tutum in conscientia parochi, qui degens in parochia per duos menses, sacramenta per seipsum non ministraret, nisi in beneficio constitutus esset alius vicarius perpetuus, ut dicunt. 114 cum Gonzal. concessos, non teneatur ad restitutionem fructuum. That does not seem altogether improbable, since according to the Council it is said in the aforementioned chapter that such a space is not considered grave matter; for with regard to the absence of bishops for a trimester, the word "aliquantisper" is used; and with regard to the absence of parishes for a bimonthly period, no serious cause is required. They say however, Bon. and 3 p. i n. 752!, that Palich. IV. Regarding particular precepts, etc., the rochi who are merely clothed with the habit may be entrusted with the entire sacristan care.

Curati autem etiam actu peccant mortaliter, si semper per alios ministrent, cum ipsi commode posint; secus, si aliquando ministrarent, per se praesertim Sacramentum Penitentiae; et alias per Sacellanos. There is doubt 4 whether the Bishop or the Parochus who does not reside is bound to an integral restitution of fruits during the time of the absentees' absence; (affirms D. 5 p. 4 n. 5 because, as he says, the Tridentine Council indefinitely deprives them of these fruits; for indefinite privation is equivalent to universal deprivation.) They indeed probably deny concerning three. Croix l. 3 n. 737 et 3. 4. 3 art. 3 n. 3 et 4 cum Vasq. et communi, ut asserit; idemque ait. And of the same opinion is Bon., that all DD. who excuse themselves from complete restitution of the fruits of Beneficed ones, omitting the recitation of Hours, ought to be considered as such, as we have related in lib. 3 num. 672. Quesitio 10 Ratio, quia fructus non solum dantur.

Pastors are bound to discharge burdens of residence, as well as for the celebration of Divine Office and other duties; hence, the Council of Trent, unless it has explicitly expressed the contrary, would wish benignly interpreted what those aforementioned pastors are held to restore only the fruits corresponding to residence, according to the natural reason which dictates that if anyone is burdened with double work, he should not be deprived of full remuneration, since one task suffices. 128 It is asked whether this holds. To whom should fruits be restored from non Residents? This must be noted as a difference between the reason to be given to the Beneficiary for the omission of Hours; and for the omission of

residence. For such things can be done for any poor persons, and in the construction of the house of the Benefice, or in repairs and improvements of the lands of the Benefice; because all these come under the name of Fabrica Benefici, as is said in the Bull of St. Pius V, see mentioned in book 3, n. 672. As for the omission of residence, restitution must absolutely be made either to the fabric of the church or to those poor people; as it is sanctioned in the aforementioned document p. 4 and n. 1. Not satisfied is the Pastor non-resident, applying the restitution to Masses or other suffrages for the Souls of the Purgatory of that place; because truly the Souls of the dead cannot be further enriched by paupers of that place. It says however in the citation: that it would indeed be fitting for the Beneficiary to apply the restitution to himself, in a case where he himself were truly poor; yet he should not be of lower condition than others who are poor; provided that he does not do this with intent to later apply the fruits thereof on account of poverty. For fraud ought not to be patronized, as we said in lib. 3 n. 672; and thus it is said in lib. 4, which however excepts: if perchance the Beneficiary should fall into great necessity later, and moved by penitence propose himself to amend in the future.

Furthermore, . 5 and Bonaventure on the same, question 1, article 5, page 4, note 10; whereas, however, if they had donated before the transfer; for then the donation is null; since the poor have no certain and firm right to those fruits, but only a vague and uncertain one, as it lies in the power of the Beneficiary to choose the poor whom he will. Herein especially much should be noted concerning the residence of Canons in the place of the Benefice. Above all, it must be observed the words of Trent, which regarding this matter are contained in the following: I pass over those who hold Dignities, Canonries, etc., in the same Cathedrals or Colleges, for whose sake no Constitution, either of any statute or custom, will allow them to be absent more than three months... in any one year, provided that nevertheless the Constitutions of those Churches do not require a longer term of service. In the first year, each one shall be deprived of half the fruits, which both the prebend and residence have made its own by reason. Quod si iterum idem fuerit usus negligentia, privetur omni fructu, quos eodem anno lucratus fuerit. Increase according to Chapter 4, Section 4. IV.

From Insuper according to the Diplomaticum of N. S. S. P. Benedictus XIV. (quod retulimus l. 3 n. 675 v. It is doubted 3) that which we have reported concerning those Canonici Chori who are not interested therein, or who neither chant nor sing, not only shall lose the Distribution, as has already been established in the same canon r2. Council (whose words we have reported in the same location), but also all the fruits of the Prebends, when they do not make them their own. If therefore they do not produce their

fruits, those who do not chant so much as those who do not reside any more fail to do so. Besides, this is clearly derived from the same Tridentine passage mentioned above (whatever it may say in 5. De Onere Beneficii ad, where it is stated that a Canon who does not reside for more than three months will be deprived of half the fruits, which are also considered as his own by reason of the residence (note)).

Therefore, if by reason of residence a Canon makes his fruits, he does not by not residing make them. But Bonacina says (and this is very probable), ibid., with Gar. Macigna, ex quadam declaratio. S C. The canons should not be deprived of their fruits, if they are absent for no more than a few days beyond three months; for such a transgression does not seem to merit so severe a punishment as the loss of half their fruits. However, canons absent for three months do not gain from Distributions, but they abundantly gain from the fruits of the Prebend: Provided that during the remainder of the year they remain idle and frequent the choir, against Palcucius, Decretum, 3, dist. 7, p. 9, n. 10, and Bonaventura, de secunda quaest., qu. 5, p. 4, n. 22 et 25 who say that canons absent for a greater part of the year do not thereby lose the privilege of three months granted to them, since the privilege was not given to those residing, but bound by obligation to reside; otherwise canons would not be able to enjoy this privilege before having resided for nine months, which certainly would not accord with received usage, because in any part of the year they are accustomed to receive the privilege of three months. But I do not acquiesce to this opinion, because the Council absolved praebendaries absent for more than three months from privation of the fruits of the Praebend; and moreover it condemns them to restore half the fruits, which they had made their own by reason of residence; whereby themselves, after an absence of three months, are entirely deprived of the aforementioned privilege.

But a Canonici, qui inutiliter prodigit tres mensibus, à affirmant Palud. et 535 n. 32. But they more probably deny it there., and Leand. Reason, because the Council absolutely grants to Canons that they be absent for three months without any special cause required. Indeed, the Canons can join the time of the granted trimester with the trimester of the following year, as Pell and Leand say. Unless (the Council on page 535, note 33, excepts it), scandal arises or the Divine worship is diminished. Moreover, it is relevant according to Concinia that Sacred Canon law has declared apud Leand., that these three months cannot be computed from the hours during which resident Canons are absent from the choir; likewise, it has declared that Canons cannot be credited with punctuations for the three months granted to them in such a way that they would not have anything required of them to restore if all the punctuations of the year do not

exceed one fourth of the residue.

Otherwise, those regularly absent from the choir for just cause gain profit and fruit, and distributions: thus commonly Bonacina 1. . 16 c. 4 n. 11. Concinia t. 5 pag. 522 n. 2 etc. Whatever it may be that others deny concerning Distributiones, which according to their absence should have been due to themselves. It is opposed to this that from the Decree. S. C. Cone. apud. George. Peace (Jord.

Peace Elucubr. lib. 10 tom. 40 n. 73.) Canonists cannot be absent from the months of councils unless by permission of the Bishop. The three causes excusing Canons from assisting in the choir, as Boniface VIII established in cap. unic. de Cler. non resid. in 6, namely: Infirmitas, Rationalis corporis necessitas, et Evidens Ecclesiæ utilitas. And it is expedient to note that he who does not reside on account of these three causes expressed in the aforementioned text shall not be deprived either of the fruits of the Prebend or of... Distillutionibus, ut patet ex eodem capitolo citato. To which three causes added is the fourth cause (as Pichler considers in Candid. ab breo, l. 3t t. 4 n. 8), namely the custom introduced post-Tridentine: for the Council antegressively abolished it. But those who do not reside for diverse reasons other than the three aforementioned ones, namely for study, visitation, and others, about which there will be discourse below (where always the permission of the Bishop or Prelate is required), these indeed reap fruit, but not distributions, as Anucl. l. 3: tit. 4 n. 134 et 163 with Holzmann tomo 1 p. 434 and others commonly hold. I. Ergo excusat Infir- mius, non quidem levis, sed tantum gravis, vel qua gravis fieri potest per accessum ad Ecclesiam, ut com- muniter dicunt Palaus D. 3 p. 9 § 1 n. 2.

Concina io. 2 pag. 522 n. 2 et 16 c. 4 n. 15 cum n. 3. Et hoc, etiamsi quis data opera in morbum se conjecerit, ut absit a Choro, prout probabiliter dicunt Palaus, Sal. ll. cc. et probabilem putat Concina n. 4 cum Bon. Reason, because the law regards infirmity, not intensity; and this even if such a person had previously been accustomed to be absent from the choir, as is probable . 2 de item Conc. l. c. n. 5 et . nav. et nam leges non puniunt nisi culpabilem absentiam. But otherwise, they say, according to 2. c. 2, p. 526 n. 6, if a Canon absent himself without legitimate cause and is infirm, then he is reckoned culpably absent for the whole time of his absence. Against this judgment, which I hear called common, I refuse to pass sentence; but it seems harsh to me that, if anyone is allowed to approach although without a legitimate cause and thereby contracts a perpetual disease, he should be deprived of distributions and fruits for eternity. It is doubted whether the aged seventy years and above should be excused from choir assistance entirely? Leander and others affirm this; but P. more

truly denies it, for they go out to attend to other matters that are necessary. If they are weak and less fit to perform a long journey so as not to be of any benefit, as Men. and others say. Hence it is proven: They say Doubtful 2, whether the blind and deaf should also be excused from distributions if they are absent from the choir? They affirm chapter 4 number 18.

That they infer from the law of the first chapter. C. who suffers from a disease, etc., where it is said: He who has lost the act of either eye perceives the alleviation of personal burdens. But rather it denies, according to lib. 2, cap. 2, dub. go. et . P. II. A rational necessity of the body excuses it, under which is understood fear of any serious damage to life, honor, or goods. Wherefore they are not deprived of the distribution of necessaries who remain at home to take medicine, as a vein is cut, or go forth to baths, or seek a place of fresher air: likewise those who are captured by enemies, or suffer unjust exile, or are detained by force, or through fear of great harm from enemies; thus 16 c. 4 n. 19. et Corh. 1. 2 pag. 526 n. 9 cum commun.

The same is more probablistically to be said of the absent one on account of fear of war, or of a pestilence raging in the place of Benefice, as they hold 8. . 7 D. 3 p. 9 §. 2 n. 2. et c. Lib. IV. Whether it is justly excommunicated; if unjustly, let care be taken that he be absolved from the excommunication, Concina p. 527 n. 10. And similarly regarding one suspended canonically, Concina considers it more probable that this be so n. 12. If however someone is justly excommunicated, even though Choros be present, Father P. with Abbot thinks. Sylvius and commune, as he asserts, consider it; to lose both the distributions and the fruits of the Benefice; but they probably deny this 3 D. 51 n. 12. with Concina. Vasq. et ac cum P., nullibi tamen constat hanc privationem ipso iure impositam esse.

Qui autem esset excommunicatus, et resipiscens peteret absolutionem, non amitteret distributiones, si negaretur ei injustè absolutio, cum tunc per ipsum non fiat, quominùs assistat. Palaus, p. 9, § 2, n. 4, cum Sa, Henr. When however the Church is under interdict, canonists do not cease to assist distributions, provided that they have not given a reason for the interdict; Concina l.c. n. 12: Similarly in the cessation of divine offices, then too those who do not give a reason for the cessation are deprived of distributions, as Concina l.c. and Cum., where it is established that those who give a reason for the cessation should restore to canonists all their interest which they lose by omitting to assist at divine services, d. n. 12. cum . et Communis. It is asked whether canonical irregulars who assist lose distributions and the fruits of a Prebend? If they incur irregularity

after the conferral of Benefice, it is certain and common that neither [of these] shall lose anything: Thus Concina t. 2. pag. 527. n. 12. But a doubt arises when they incurred irregularity before the conferral of the Benefice.

This question entirely depends upon another, namely whether the collation of the Prebend to the cleric is in itself invalid by reason of irregularity? They deny it. Palaus. de Censur. tr. 29. D. 6. p. 5 n. 7. Elsewhere t. 2, pag. 457 n. 158. . 1 et 10, c. 7 n. 34. with Sylv; Feltn. Leand. The reason is because the effects thereof incur less frequently, since no irregularity is incurred unless it be expressed in law; and this effect, namely incapacitation from receiving benefits, is nowhere found expressed in law. They indeed affirm more probingly, Concina loc. cit., and Bonac. de Irreg.

D. 5. p. 4 n. 6. with others: and this judgment they themselves . It is proven 1. from c. 2. de ergò sine dispensatione ipse est inhabilis ad recipienda beneficia. It is proven 2. and more strongly from chapter 22, book 4, de Ref., where the Council speaking about prebendaries says thus: "Let no provision be made for impostors, unless those who have been found to possess the age and other qualifications intact are designated; otherwise, such provision would be offensive." Respondents admit that the solution is difficult, and they say that other qualifications are to be understood as qualifications from natural law, not positive law: but this response does not suffice; for when the Council demands qualifications indistinctly and entirely, it must be understood as requiring all qualifications, both those of natural necessity and those of positive necessity; and this seems expressly declared in the same place, where it is said, 'those who already possess age, etc.' that is, the age required to receive Orders, which the Council has prescribed; and certainly this qualification is from positive law. Here is a more probable reference: P. Canc. 500 Lib. IV.

On particular precedents, etc., 4. c., he considers that clerics who are received after irregularities in prebends are ipso jure and even in conscience deprived of distributions and fruits of the benefice. III. It excuses the utilities of the Church, provided that the utility be serious in the judgment of the Bishop or Chapter, and that it be either proper to the Church, universal, or to the whole Diocese, not however to another Church or particular one, as is said in chapter 16, canon 4, note 23. But he who because of the utility of the Church is absent from the place of his Benefice shall profit by distributions: Some deny this from the chapter Cum non deceat, de Cler. non resid. in 6, where those clerics who go to the Apostolic See on account of the affairs of their Churches are deprived of distributions. But Salman more probabily affirms, l.c. n. 24, with Palud.

15, from cap. un de Cler. non resid. in 6, where it is absolutely conceded a privilege to those absent for the utility evident of the Church. The other text is understood to refer solely to the case where the Prebendary accedes to the Apostolic See by reason of the arrangement for his election.

Item, ex hac ratione excusat Canonicus, qui mittitur (nam unus tantùm mitti potest) ab Episcopo ad visitanda Limina Apostolorum, ut communiter omnes cum Concina num. 16. The same is said of the Canon who accompanies his Bishop to those same Limina, according to the Decree of Sixtus V found in Concina, who there states that a Bishop visiting the Limina can also bring two Canons with him. The same is said of the Canonist sent to the Provincial Council as Theologian, Lawyer, or Advocate, as Concina more probingly understands on page 529, number 17, and Salmanticensis, book 4, number 24, with Palud. The same is said if a Vicar Capitular is chosen during the vacancy of the See, as commonly teach the Doctors, because here it concerns the utility of the whole Diocese. Accordingly, if a Vicar Bishop is elected, because then he serves the Bishop, not the church. For indeed it is brought about that the fruit of Præ-Capitular II. is obtained.

Dub. I. On the State of Clerics. 50. bands, but not distributions. Salmantica. c. 3 n. 34. However minimally, a Canon is deprived of distributions. A penitentiary of the 13th rank, who calls confessions during the time of office from the pulpit: some penitentiary with the union proximate to the prebend of vacancy instituted by the Bishop; he should be a master, or doctor, or licentiate in theology or canon law, and someone suitable for the quality of the place found apt, who while hearing confessions in the church is considered present in the choir. But there is doubt whether the distribution of the Penitentiary is created, who remains during the time of office in the confessional awaiting the arrivals of penitents?

Barbosa negat de 65 n. 3o: cum Garcia, Ugolin. Sal. et Moneta, qui referunt de cism, non habendum esse praesente in Choro Pœnitentiarium, qui residet in confessionali pro tempore, quo non audit Confessiones; etiam ut opportuniùs Confessiones audiat. But rather Salm, c. 4 n. 31 with c. 6 q. 2 r. 1—and Con. with . affirm that if penitents are accustomed to accede, and the Penitentiary so detains itself in this intent, that it may present itself to them more promptly, this is from the Decl. S. C. relatâ à Barbosa in Con. et de aliis, qui Pœnitentiarium adjuvant de mandato Superioris in magno concursu, Con. ibid. et Præterèà addunt . 3 §. 5 n. 3 cum C. in una Gienen. 4. September 1591. The Penitentiary is to be considered present even at processions, prayers, and funerals of the Dead, which take place while He Himself hears Confessions.

As to what they say concerning the Penitentiary, they also say it concerning the Canonically appointed curate who, during the time of the Office, exercises his duties, n. 8. Whoever feels that it should proceed in this way, even if the Church for which he has care is different from the Church where the Canonist is; provided that the latter be within its own Diocese; but Bonac contradicts this. Decretum respondens quaestioni quintae partis tertii sectionis sextae numeralis quinta. He does not lose the distributions who is absent for the purpose of defending his own rights of the Benefice: but rather if he defends his right to the Benefice against another, ibid. - In like manner the Canon Theologian gains distributions when he reads or preaches during the time of Office, as all commonly teach; and even though he might prepare himself at other hours of that same day (not however of the preceding day) for reading or preaching, according to XIII Centena, p. 531, n. 21 with the more common explanation from the Decl. S. C. apud Garticum, qui contrahit. They, however, perceive Concina, page 532 n. 22, etc., to be against Barbos. and Zechium in .

They also say regarding those Canons destined by the Bishop to visit Hospitals and Churches of the Diocese, because these do not occupy themselves with the service of their own Church. However, a bishop can occupy two Canons in his service according to cap. De cætero, etc., for hearing the clergy, who do not earn the fruits of the Prebend but not its distributions; as stated in c. et S. C. P. however, says that during the time of Office and Mass, those absent from the Chorus due to celebrating Capitula are deprived both of distributions and fruits of the Prebend, because it is forbidden to celebrate Capitula during the time of Office or Missa Choralis unless there be urgent business which cannot wait; Conc. ibid. 132. Finally, note that those Prebendaries teaching in public schools (not private ones) acquire the fruits of their Benefices while lecturing on Sacred Scripture, even though they do not receive distributions; this is commonly extended by DD. to teachers as a Canon right, according to Roncag. de Concina t. 2 pag. 533 n. 24. Garcia, qui de hoc affert declaratio nem S. C. Idem dicunt de docentibus Grammaticam Palud, n. 3. Concina n. 26. Roncag, loc. cit., et 16 c. 4 n. 37. Nor do the Salmanticenses hold the same view regarding those who teach Logic and Philosophy, because (as they say) all these subjects are necessarily preliminary to the study of Theology.

Whether, however, those priests who teach sacred Scripture: Theology or Canon Law participate in the same privilege? P. Concina negat num. 25, quia in Tridentino Parochus absolute vetatur abesse ultra duos menses. But probably Palaus n. 4. cited with Gonzal admit it. Barbos: etc. Ratio, quia in

citato capite ad finem de Magistris indistincte omnibus conceditur facultati theologicae docentibus privilegium sive exemptionem a residentia; hoc privilium non habet Tridentinus, quod ibi clare sit revocatum: haec sunt verba textus praefati. Docentes vero in facultate theologiae dum in scholis docuerint et studentes in ipsa integre per annos quaecunque percipiant de licentia (namely generalis concessa auctoritate hujus Constitutionis, ubi explicat Glossa) Sedis Apostolicae proventus praebendarum et beneficiorum suorum non obstante alia consuetudine aut statuto; cum denario fraudari non debeant in vinea Domini operantes. Reason, because it contributes to the good of the entire diocese, nay, even of the universal Church. The same privilege is indeed granted to students in residence at the university from Trent, as stated in loco citato et in the aforementioned chapter and section on privileges for non-resident clerics, non. 6, cap. Tua de Clericis non residentibus; namely, that if they diligently apply themselves to studies during at least a greater part of the year, as stated in number 5 with Bonac.

Barbos. etc., et modo habeant de hoc licentiam (quæ vero non requiritur pro docenti bus, ut dicunt Palaus part. 9§9 n. 7. 6 R. 3. tr. 28 n. 13o cum Ad aures, edita 24 Novemb. 1564. This license is granted to them for five years if they listen to sacred Canons; for seven years however, if they listen to Sacred Scripture or Theology, as stated by Garc. and 9. c. They consider that to be probable, as stated by Palaus ibid. and chapter 16, section 4, note 39. Because in the cited chapter at its conclusion concerning Masters, those who teach enjoy the same privilege as those who study. But they more probingly deny it, as the Council says on page 534, note 29. . 6 R. 3. Palaus n. 9. cited with Gonzal. and S. C. according to Garciam declared that such a reason for studies is by no means grave; firstly because the aforementioned privilege was granted only to those adducing it, whence parishes should not be conceded it, who are already considered instructed.

They say, however, that if from the Pope a license is granted to someone, so as to avoid the cause of studies, this will not be valid unless the consent of the Ordinary be added. And thus likewise they report that Pius IV declared concerning those who assist in the Roman Curia with studies. Here however incidentally it must be noted that in c. fin. de D. 2 q. 4 p. 7 n. 4 with the common, this is not understood of private study; nor if a reader hears at home, as he might consider probable according to . 6 cap. 8 n. 9 and the same Bon. cum Tab. et aliis). Hence such students are deprived of the fruits of their studies. Prebendaries, as they say, c. p. 9 n. 6. We said, however, that the aforementioned Masters or Scholars excused themselves from laboring for profit. Of benefits, not rather distributions: if however a benefit were to consist solely of distributions, these too would still be considered profitable according to the Council on page 533 n. 27,

with common reference from the Declaration.

S. C. according to Garcia (contrary to Bonaventure) because then distributions succeed in place of fruits. And likewise the Council says on page 536 n. 35 that those who are dispensed from Choro when a Benefice is constituted solely from distributions are considered to be enriched. Nevertheless, the Council opposes others, if the distributions are small for Anniversaries, because Testators do not wish to give them except to those who assist. ## ARTICULUS V. ## By what modes are Beneficia lost? How are Beneficia lost in various ways? What is and how manifold is Resignatio? What is required that Resignation be valid? What concerning the Permutation of Beneficia? « Resp. 1. Benefits are lost in four ways: 1. Through the death of the Beneficiary; 2. By disposition of law, which is either due to the impossibility of acquiring another Benefit, or through religious profession, or by means of a matrimonial contract, or through criminal commission (e.g., heresy, schism, sodomy), often practiced, for whose loss of Benefits the very fact itself is annexed, as seen in 2 cap. 34 d. 34. » By the sentence of the judge. 4 By free resignation, of which. Resp. 2 Resignatio est spontanea dimissio proprii Beneficii facta coram legitimo Superiore id acceplente.

It is twofold, namely tacit, which is effected by legal disposition; as when one renounces Religion through a legal act. Lb. IV. Regarding particular precepts, etc., it is said: and expressed, which again is double, namely, pure, which occurs without any appended condition or pact before the Ordinary who can confer a benefit upon anyone; and conditional, or in favor of someone: and this either is simple in favor, as when it is done without reservation; or is qualified, when indeed it is reserved to him by right of return, or pension, or some other benefits which can only be obtained through simony, unless they are in the hands of the Pontiff. And although it is more truly so, even a simple resignation in the hands of the Pontiff can be made, since otherwise there would be some danger that resignations of benefices might acquire a certain semblance of hereditary succession, which Canon Law detests: yet it is nevertheless probable that it could be done in the hands of the Ordinary, because a change can be effected in his hands. * (But they completely contradict the common.) It is true a fortiori if it be done without any obligatory condition, even though added with some prayer, so that a certain person may be conferred.

This can be observed where no Bull of Pius V has been received prohibiting any designation of a successor in person, as cited in 4 t. 2 cap. 17. Moreover, in order that a conditional resignation be valid, it is required 1. That the benefit may be the resignment's, since resignment is the dismissal of one's own right. That it may be made freely. 3. » That it

may be in the hands of him who can admit, namely the Pontiff, Ordinary, Collector, or Instaurator, according to what has been said. 4. That it may be accepted by the Prelate, in whose hands it is made, because without acceptance he does not lose his right by resigning it.

That it may be conferred upon him for whose favor, with the usual clause, it has been resigned neither otherwise nor otherwise. That he to whom it is conferred may accept; otherwise, resigning one does not lose the Beneficium because of the clause, otherwise. 7. It is required that there be a consensus of the Patron, or of the Electors, according to whether the Benefice is one of patronage or of election. 8. If the resigning party is infirm, so that he may survive for twenty days from the resignation, otherwise it will be deemed vacant by death. That is to say, if the resignation takes place in the Roman Curia, within six months from the date of the submission of the petition it shall be reckoned, and the Benefice shall be published in its stead: but if outside the Curia, within three months; otherwise, should the ressignant die before he has taken possession, the Benefice shall be considered vacant. However, called nevertheless to those whose interest it is, namely, the Patron and the Lower Collaborator.

For all these things are required which pertain to a resignation in favor of. V. 35 and 36. Bonaventurae de Simeone, dissertationis de gratia d. 1, quaestio 4, sectio 12. » (See l. 3 n. 72.) » You will ask: Whether permutations are licit before Ordinaries in the reserved months according to Concilium given for Germany? Resp. affirmatively, because through the reservation made by the Concordators, the Pope is not deemed to have wished to make the condition of Ordinaries in Germany worse than that of Bishops outside of Germany, concerning whom this is simply permitted. » Quæres 2.

Whether it is lawful to exchange Benefices, with an equalization of fruits. Resp. n. it is not permissible to exchange a copious benefit, not separated by distinct revenues, for a smaller one. The reason is that that excess, precisely because it remains annexed to the title, is due to the title; hence nothing can be demanded in regard to it, still less can anything be demanded for the title. Resp. 2. to petition compensation for this kind of permutation from the Pontiff for temporal inconvenience, which another suffers by stripping himself of his benefice revenues; hence such compensation is neither a reward for the benefice nor for annexed revenues, Lib. 5o8. IV. Regarding particular precedents, etc., but the condition is that it preserves itself indemnified; otherwise, with what condition it would not wish to be stripped.

» Resp. 3. Rights to income can be separated from titles, - first from naked titles; then by another contract, rights to income, as far as temporal matters are concerned, can be exchanged, compensating for any surplus; this is authorized solely by the authority of the Pope. V. . c. Bon. l. c. § 12 n. 11 * (Vi- de l. 3 n. 75 et 76.) * Quæres 3. Is it licit to permute the Beneficium according to this law, so that the expenses of the lawsuit or Bull may be refunded through the recipient? Resp. To appear as a permutation if it is monastic, provided that the expenses are the impulsive cause of the mutation, without which the act would not have been future.

I would likewise affirm a similar resignation. . c. Bon. Chapter 1. Section 9. Number 9. » ## ARTICLE VI. ## What is a pension, and in how many ways can it be designated? 137 What is a pension, and in how many ways can it be designated? 138 From whom and to what extent can a pension be assigned? 139 Can the pensioner freely dispose of that pension? Resp. Pension is the right to receive fruits from another's benefit. It is triple: namely, v.

Temporalis, quae da- tur propter ministerium temporale, v. gr., which is given because of temporal ministry, for example. Choir-master, singer, patron, and defender! The Church. 2. Spiritual, qua est fundata in titulo mere spirituali, ut quae datur Concionatori, Coadjutori Episcopi, Pa- rocho, etc. 3. Means which are grounded in a spiritual state, yet do not constitute a spiritual office: such as what is given to a poor cleric or an elderly parish priest for sustenance, or what is given on account of resignation and reconciliation of disputes. The two latter are called Clericales because they are given to Clerics; the first is Laicalis because it is given only to Laics.

Moreover concerning pensions c. 35 teaches this: I. Although it is proper for the Pope to designate her, nevertheless and yet the Bishop can be capable in special causes and necessities: e.g., on account of poverty, or the resignation of one who is destitute, or for settlement of a lawsuit, or because appropriate fruits are needed, in exchange of Benefices. * (See l. 3. n. 73.) * II. It should be moderated so that the Beneficiatus may have a sufficient subsistence; such moderation is usually considered to be one-third of the fruits. *(Cum.* Consent of the patron is not required for the pension, as some wish, because it has been established by no law. No prejudice is incurred through the imposition of pension, since he does not receive any fruit from the Benefice, but merely has the right to institute and present, which is not denied to him. IV.

The pensionary after the constitution of Pius V., where it has been received, is bound to recite the Office B. V. nor does he reap its fruits if he omits it. * (It is understood to refer to the pension which a cleric procures.

See. Italy. Chapter and verse, and on that point. The pension ceases at the death of the pensioner, just as the usufruct ceases at the death of the usufructuary. However, the Pope could make it perpetual, out of the fullness of power.

On the sale and redemption of a pension, v. Laym. c. 18. and . 2 c. 25 d. 22. Good. l. c. §. 13. It is asked whether a pensionary can dispose of the revenues of the pension at his own discretion? They affirm that a pension is, as they say, a portion already extracted from the fruits of the Benefice.

And for this opinion there is a decision of the Roman Curia, which is brought forth in 7 c. 9 q. 12. wherein it was defined that pensions that are decursum and not solutio shall not be reckoned among spolia (just as the fruits of Beneficia are reckoned), but they pass to the heirs; because a pension is not a Beneficium, but consists solely in temporal matters. Negat vero. Garcia, because pension is subject to the same rules as Beneficia. Lib. IV. They distinguish what pertains to the true, and affirm concerning the lay pension, but deny concerning the ecclesiastical pension.

These three opinions are all probables. See 1. 3 n. 491. What. VI. END OF THE THIRD BOOK. INDEX OF THE TOPICS AND HEADINGS OF THE THIRD BOOK.

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ON THE SPECIFIC PRECEPTS APPLICABLE TO CERTAIN HUMAN STATUTES OF THEIR OWN. 1 On the State of Religious Life..... 351 2 On the State of Clerics..... 440 WARNING. This volume would already have been distributed to subscribers for a long time, unless the Corrector had noticed it; many texts, both from Sacred Scripture and from the Council of Trent, Angelic Doctor, Salamanca, Lessio, Layman, La Croix, and other authors, incorrectly cited, and many places poorly quoted, would often have required recourse to the sources. All these things are found corrected in N. 997. 931. 966. 968. 973. 981. 985. 992. 1000. 1011. 1022. 1030. 1041. 1042. 1046. 1047. From Volume 2. Ed.

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